

IN THE

United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

IRA KLEIMAN, as the Personal Representative
of the ESTATE OF DAVID KLEIMAN,
Plaintiff-Appellant,
W&K INFO DEFENSE RESEARCH, LLC,
Plaintiff,
—v.—

CRAIG WRIGHT,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

SUPPLEMENTAL APPENDIX
VOLUME VI OF XVII

ANDREW S. BRENNER
LASELVE ELIJAH HARRISON
ALEXANDER J. HOLTZMAN
SAMANTHA MARIE LICATA
MAXWELL PRITT
STEPHEN NEAL ZACK
BOIES SCHILLER FLEXNER LLP
100 SE Second Street, Suite 2800
Miami, Florida 33131
(305) 539-8400

DEVIN FREEDMAN
FREEDMAN NORMAND
FRIEDLAND, LLP
1 SE Third Avenue, Suite 1240
Miami, Florida 33131
(305) 306-9211

—and—

KYLE ROCHE
STEPHEN LAGOS
ROCHE FREEDMAN LLC
99 Park Avenue, Suite 1910
New York, New York 10016
(646) 350-0527
jcyrulnik@rcflp.com
Attorneys for Plaintiff-Appellant

ANDRÉS RIVERO
JORGE A. MESTRE
AMANDA MCGOVERN
ALAN H. ROLNICK
ROBERT J. KUNTZ JR.
ALLISON HENRY
RIVERO MESTRE LLP
2525 Ponce de León Boulevard, Suite 1000
Miami, Florida 33134
Telephone: (305) 445-2500
Facsimile: (305) 445-2505
arivero@riveromestre.com
jmestre@riveromesre.com
amcgovern@riveromestre.com
arolnick@riveromestre.com
rkuntz@riveromestre.com
ahenry@riveromestre.com

MICHAEL A. FERNÁNDEZ
AMY C. BROWN
RIVERO MESTRE LLP
565 Fifth Avenue, 7th Floor
New York, New York 10017
Telephone: (212) 880-9451
Facsimile: (212) 504-9522
mfernandez@riveromestre.com
abrown@riveromestre.com
Attorneys for Defendant-Appellee

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1 documents that you have pertaining to the project proposal
2 listed below." Do you see that?

3 A. Yes.

4 Q. Okay. And the company name is W&K, right?

5 A. Yeah.

6 Q. And the owner name, Dave Kleiman, right?

7 A. Yes.

8 Q. And this project number, there's a long series of numbers.
9 Do you see it?

10 A. Yes, I do.

11 Q. All right. We'll have to probably do -- at some point, do
12 a comparison back, but maybe we'll be able to remember this
13 ends in -- this is BAA and ends in 2205.

14 And do you see that it's for something called "Software
15 Assurance Marketplace," SWAMP?

16 A. Yes. I see it.

17 Q. Okay.

18 MR. RIVERO: Can you go up, Mr. Shah.

19 BY MR. RIVERO:

20 Q. And they say they would search. If you see here in the
21 paragraph starting: "In responding to a FOIA request."

22 A. Right.

23 Q. They said they would search, right?

24 A. (No verbal response.)

25 Q. Is that right, Mr. Kleiman?

1 A. Yes.

2 Q. Do you see it?

3 A. Yes.

4 Q. Okay.

5 MR. RIVERO: Let's go to the second page.

6 BY MR. RIVERO:

7 Q. Okay. So the request goes out there.

8 MR. RIVERO: Now let's show the witness and the Court
9 and counsel Defendant's 67.

10 And we can show the first page and the second page --
11 or there's six pages. You can show the whole thing.

12 Okay.

13 BY MR. RIVERO:

14 Q. This is a response you got to your own personal request to
15 the Department of Homeland Security, right?

16 A. Yes. I believe so.

17 Q. Is it a fair statement you were trying to find out what W&K
18 was doing?

19 A. Yes. I wanted to find out more about the projects that
20 Craig had listed.

21 Q. And now, this was an earlier email --

22 MR. RIVERO: Judge, I'd move the admission of D67.

23 THE COURT: Is there any objection?

24 MR. BRENNER: No objection.

25 THE COURT: All right. And let me know when it might

1 be a good time to break for lunch.

2 (Defendant's Exhibit 67 received into evidence.)

3 MR. RIVERO: All right. Judge, I'll just get through
4 this and --

5 THE COURT: Certainly.

6 MR. RIVERO: Especially since I'm on a roll with the
7 exhibit numbers, Judge. I think I should do this now. So -- I
8 won't take too much time before the lunch break.

9 BY MR. RIVERO:

10 Q. But this is another electronic final response to your
11 Freedom of Information Act request.

12 MR. RIVERO: If you could indicate that to the jury.

13 BY MR. RIVERO:

14 Q. Right, Mr. Kleiman?

15 A. Yes, it is.

16 Q. That's to your address, right?

17 A. Yes.

18 Q. And apparently you were looking for copies of three
19 different tenders -- I'm sorry -- RFPs?

20 A. That's correct.

21 Q. All right. And -- by the way, none of them is the BAA-0025
22 that we just saw. These three?

23 A. What's that?

24 Q. Do you remember -- I know it's hard to remember the
25 numbers, but do you remember we just saw a response to Kyle

1 Roche that started BAA and then ended 0025?

2 A. Yes.

3 Q. Okay. This is three other ones, correct?

4 A. Correct.

5 Q. Okay. So there's three and they have their numbers. We
6 can see 0127, 0155, 0049. Nobody's going to remember that.
7 But you see that, right?

8 A. Yes, I do.

9 Q. But each one has a name, "Software Assurance Through
10 Economic Measures," and the price was going to be 650,000,
11 right?

12 A. Yes.

13 Q. And then "Secure Resilient Systems and Networks" and the
14 proposal was for \$1.8 million, right?

15 A. Yes.

16 Q. And the "Cyber Economics" one, the last one, 2.2 million,
17 right?

18 A. Yes.

19 Q. And then they found -- they found responses -- they found
20 some pages that said: "Yep, what you're asking for, we have
21 some stuff." Right?

22 A. That, I don't remember.

23 Q. Okay. Well, look. It says: "A search of the
24 Cybersecurity Division for documents responsive to your request
25 produced a total of three pages." Right?

1 A. Yeah. I just don't remember what's on these three pages.

2 Q. Okay. Let's go up.

3 MR. RIVERO: Mr. Shah, if you can show the next page.

4 Judge, I'll stop right after this exhibit.

5 BY MR. RIVERO:

6 Q. Okay. It goes on and it tells you all your rights and
7 everything you could do and the processing fees.

8 MR. RIVERO: Page 3, Mr. Shah.

9 BY MR. RIVERO:

10 Q. Okay. This one is "W&K Info Defense Research, LLC,
11 attention: Craig Wright," at your brother's address, right?

12 A. Yes.

13 Q. And it's a notification regarding one of the proposals that
14 we just saw. And what they say is: "The letters in reference
15 to the subject whitepaper" -- right?

16 A. Yes.

17 Q. That's what "WP" means, right?

18 A. "WP"?

19 Q. Yeah. You see at the end of the number it says: "WP"?

20 A. Oh, okay. Yes.

21 Q. Yeah. And it says -- if you look at the second paragraph,
22 it was evaluated by a panel of experts, right?

23 A. Yes.

24 Q. "And based on this review, it has been determined DHS is
25 not interested in pursuing the technology development described

1 in the submitted whitepaper."

2 Do you see that?

3 A. Yes.

4 Q. Okay. And sir, I want to make sure to avoid confusion,
5 because whitepaper -- do you know this is a common term in
6 scientific matters that's used?

7 A. Yes.

8 Q. Okay. If we can look back at -- bearing in mind, if you
9 would, Mr. Kleiman, that the last four numbers are 0127 --

10 MR. RIVERO: If we can go back to the first page,
11 Mr. Shah, because I don't want anybody to get confused on this.

12 BY MR. RIVERO:

13 Q. Can you see that there's a name for 0127, which is
14 "Software Assurance Through Economic Measures"? Do you see
15 that?

16 A. Yes. I see it.

17 Q. That's not the Satoshi Nakamoto Whitepaper, right?

18 A. Correct.

19 Q. Okay. That's some other whitepaper, correct?

20 A. I suppose so.

21 Q. Yeah. Well, you see that what they provided you was -- it
22 was rejected. They weren't interested in paying \$650,000 for
23 that paper, right?

24 A. Right.

25 Q. Okay. And I'm going to try to do this quickly. If you

1 don't understand what I'm pointing to, let me know because I
2 really do want to stop.

3 MR. RIVERO: Judge, you know what? I will take it up
4 after the lunch hour and finish this because I think it's time.

5 THE COURT: All right.

6 Ladies and Gentlemen, let's take a recess. I'll see
7 you back here after lunch at 2:05.

8 (Jury not present, 1:04 p.m.)

9 THE COURT: Have a pleasant lunch.

10 MR. BRENNER: Thank you.

11 (Recess from 1:04 p.m. to 2:04 p.m.)

12 THE COURT: Go ahead and have a seat. Just waiting
13 for the Defendant's attorneys.

14 Are they all ready to go?

15 COURT SECURITY OFFICER: They're all ready to go.

16 THE COURT: All right. Welcome back. I trust
17 everyone had a nice lunch and ready to get back to work.

18 Is there anything we need to address?

19 MR. BRENNER: Nothing for the Plaintiffs', Your Honor.

20 MR. RIVERO: Nothing from the Defense.

21 THE COURT: All right. Let's bring in the jury.

22 (Before the Jury, 2:04 p.m.)

23 THE COURT: All right. Welcome back. Please be
24 seated. I hope you had a nice lunch and ready to get back to
25 work and we'll continue with the cross-examination.

1 CROSS-EXAMINATION [CONTINUED]

2 BY MR. RIVERO:

3 Q. Good afternoon, Mr. Kleiman.

4 MR. RIVERO: And Ladies and Gentlemen.

5 THE WITNESS: Good afternoon.

6 BY MR. RIVERO:

7 Q. Sir, before the break, we were talking about the business
8 of W&K. Do you recall that?

9 A. Yes.

10 Q. Sir, I'm going to show some more documents, but I just want
11 to make sure -- make clear that we're understanding each other.

12 You sought to find out information about what kind of
13 business W&K was engaged in based on information you had gotten
14 from Craig Wright; isn't that right?

15 A. Yes.

16 Q. And when you did that, you followed up on this lead about
17 Department of Homeland Security?

18 A. Right.

19 MR. RIVERO: And I'm going to ask Mr. Shah to go ahead
20 and pull up Number 67, which was admitted and we were looking a
21 before the break.

22 BY MR. RIVERO:

23 Q. What you learned was that, in fact, there are at least four
24 different RFPs or tenders to Australians that had been
25 submitted to the Department of Homeland Security. Do you

1 remember that?

2 A. Yes.

3 Q. We were in the middle of looking at -- we had just looked
4 at -- there was one that was identified in response to
5 Mr. Roche, right?

6 A. Yes.

7 Q. And we were looking at three that were identified in a
8 response to you, right?

9 A. Correct.

10 Q. And, Mr. Kleiman, you'll recall that each of the three in
11 response to you had a dollar value attached to it in terms of
12 the proposed amount, correct?

13 A. Yes.

14 Q. And the first one, we saw, was rejected by Department of
15 Homeland Security, right?

16 A. Yes.

17 Q. You do business, right, Mr. Kleiman?

18 A. Business? As a freelancer, yes.

19 Q. Right. And I assume that not everybody decides to hire
20 you, right?

21 A. Yes.

22 Q. Sometimes you get rejected?

23 A. Sure.

24 Q. Okay. So if we can go to D67 -- and we -- and I'm going
25 to -- just to make sure that we're on the same page, this

1 one -- and there is a way that we can know which one they are
2 because there's a -- in terms of the number, which is a long,
3 complicated number, if we look at the first entry at the very
4 end, it says TTA 01. And that's an easier way to remember it.

5 So you see that that's Proposal TTA 01?

6 A. Yes. I see it.

7 Q. And this is the one we looked at, the first notice, that
8 there was a rejection about using Software Assurance Through
9 Economic Measures at \$650,000, right?

10 A. Yes.

11 Q. And you agreed with me that this was not the Bitcoin
12 Whitepaper?

13 A. Yes.

14 Q. Now --

15 MR. RIVERO: Let's look -- Mr. Shah, I think we're
16 going to find -- TTA 05. We're going to find the response from
17 the Department of Homeland Security a few pages in. We'll find
18 it if you just flip through.

19 All right. It should be the next one.

20 Yes.

21 BY MR. RIVERO:

22 Q. Now, let me make sure everyone's following this connection.

23 MR. RIVERO: Mr. Shah, if you would highlight the
24 subject notification all the way across.

25

1 BY MR. RIVERO:

2 Q. Now, Mr. Kleiman, do you see that the number is TTA 05?

3 A. Yes. I see it.

4 Q. And we see TTA 05 on the summary on the front, right?

5 A. Yes.

6 Q. Okay. Let's see what happened with TTA 05 back in May of
7 2011 -- right? That's when this happens?

8 A. Yes.

9 Q. And we had said earlier, sir, you'll recall, W&K was formed
10 in February, on Valentine's Day, 2011, right?

11 A. Yes.

12 Q. And so this is a few months later, right?

13 A. Yes.

14 Q. Okay. And this one is: "Attention: Dave Kleiman."
15 Right?

16 A. Yes, it is.

17 Q. The last one was "Attention: Craig Wright." Correct?

18 A. I believe so.

19 Q. Looks like they are both involved somehow, correct?

20 A. Yes.

21 Q. Okay. Now, this letter is in reference to the subject
22 "Whitepaper," again, with a whitepaper, and it's the same
23 department, right?

24 A. Yes.

25 MR. RIVERO: And then we go to Paragraph 2. If you

1 would highlight that, Mr. Shah.

2 BY MR. RIVERO:

3 Q. And it says --

4 MR. RIVERO: Pull it out is good.

5 BY MR. RIVERO:

6 Q. -- "The whitepaper's been evaluated by a panel of
7 experts" -- Paragraph -- Sentence 2: "Based on this review, it
8 has been determined DHS is not interested in pursuing the
9 technology described -- development described in the submitted
10 whitepaper." Right?

11 A. Yes.

12 Q. Rejected again?

13 A. Right.

14 Q. Okay.

15 MR. RIVERO: If you go to the next page -- actually,
16 go back -- Mr. Shah, just if you would tell me what page we're
17 on right now.

18 Page 4. Let's go back to the cover page.

19 Pulling out the three items.

20 BY MR. RIVERO:

21 Q. Let me just show you here TTA 05.

22 MR. RIVERO: Highlight that if you would, sir.

23 BY MR. RIVERO:

24 Q. That's the one we just saw; isn't that right, Mr. Kleiman?

25 A. Yes.

1 Q. And it's called "Secure Resilient Systems and Networks."
2 Right?

3 A. Yes.

4 Q. And it's \$1.8 million, right?

5 A. Yes.

6 Q. And this is not the Bitcoin Whitepaper, right?

7 A. No.

8 Q. In fact, the Bitcoin Whitepaper had been -- let's just -- I
9 think we can deal with this once and for all -- had been
10 released on Halloween Day 2008 public-sourced, right?

11 A. Yes.

12 Q. Without -- that means to say it belongs to the public,
13 right?

14 A. Right. Right.

15 Q. So there's nothing to charge money for -- about something
16 that was already released before, correct?

17 A. Correct.

18 Q. All right. Now let's look at the last one of this list.
19 And that's the third one, which is TTA 09.

20 MR. RIVERO: And, Mr. Shah, I believe what's going to
21 happen is -- well, if you just stay there for one second.
22 Let's just look at it at the beginning, the first page for now,
23 Mr. Shah, if you don't mind, and just highlight the third one
24 or pull it out, either way.

25 BY MR. RIVERO:

1 Q. TTA 09, that's about cyber economics, and there was a
2 request for \$2.2 million for that work, right?

3 A. Right.

4 Q. Okay. That's not the Bitcoin Whitepaper?

5 A. I don't believe so.

6 Q. Okay.

7 MR. RIVERO: Go to Page 5, if you would, Mr. Shah.

8 And I don't think it's going to necessarily surprise
9 anybody, but we can go jump right to -- this is TTA 09, tying
10 back into that third item, right?

11 Go to the second paragraph.

12 BY MR. RIVERO:

13 Q. Looks like the panel of experts is not having a lot of
14 positive feelings toward W&K because: "Based on this review,
15 it has been determined DHS is not interested in pursuing the
16 technology development described in the submitted whitepaper."
17 Right?

18 A. Yes.

19 Q. Three at-bats, no hits?

20 A. Right.

21 Q. Right?

22 A. Right.

23 Q. Okay. Now, I'm going to show you now -- you also asked for
24 other information even earlier to the Department of State.
25 You're trying to find out about W&K, right?

1 A. Yes.

2 MR. RIVERO: So I want to show you 252. Defendant's
3 252. If we could just show that to the witness, counsel, and
4 the Court.

5 MR. BRENNER: Can we see the next page, please.

6 MR. RIVERO: Okay. I think we've shown it to counsel.

7 BY MR. RIVERO:

8 Q. Mr. Kleiman, this is you corresponding back-and-forth with
9 a Florida State website -- or I should say a Florida State
10 Department about corporate information about W&K, correct?

11 A. Yes, I believe so.

12 MR. RIVERO: Judge, I move the admission of
13 Defendant's 252.

14 MR. BRENNER: No objection.

15 THE COURT: Admitted into evidence.

16 (Defendant's Exhibit 252 received into evidence.)

17 MR. RIVERO: May we publish to the jury?

18 THE COURT: You may.

19 MR. RIVERO: Thank you.

20 BY MR. RIVERO:

21 Q. Now, sir, here what you wanted to know was -- you say it --
22 let me just see if I can ...

23 MR. RIVERO: All right. At the bottom email, if you
24 will pull that out, Mr, Shah -- the bottom email on 252, the
25 first page.

1 BY MR. RIVERO:

2 Q. So you're writing with Corp. Help. Do you know,
3 Mr. Kleiman, if that was the Florida Department of
4 Corporations?

5 A. I think it was.

6 Q. And the subject was "Articles of Incorporation." Right?

7 A. Yes.

8 Q. And sir, you said: "Hi. So if I wanted to find out how
9 shares of an LLC was divided, I could only get that from the
10 company itself? What if the director of the company passed
11 away and I can't find any paperwork in his belongings that show
12 who owned what? There is no public database that keeps a
13 record of it," question mark. Right?

14 A. Yes.

15 Q. You didn't have any information; you've already testified
16 to it. You didn't know who the owners were, right?

17 A. Yeah, not until Craig contacted us.

18 Q. But you didn't have any paperwork to establish who the
19 owners were, right?

20 A. Correct.

21 Q. And that's why you're asking the Department of Corporations
22 if you can get that from them, right?

23 A. Yes.

24 Q. Okay. Now, Mr. Kleiman, I'm going to stick to W&K for the
25 moment and just finish this out.

1 You didn't -- you didn't do anything to reinstate W&K
2 before February 14, 2018, did you -- the lawsuit?

3 A. Correct.

4 Q. And other than ask for some information in some ways that
5 we've seen, you didn't -- you didn't take control of the
6 company, right?

7 A. Correct.

8 Q. Okay. You filed your lawsuit and what happened was, when
9 you filed your lawsuit, there was a motion to dismiss that
10 threatened your case, right?

11 A. I don't know. I'm not a lawyer.

12 Q. And -- well, isn't it the case that you decided to
13 reinstate the corporation after you had sued in this case?
14 Right?

15 A. Again, that's all done by my lawyers.

16 Q. Well, sir, I'm just talking about dates. The date of the
17 reinstatement was after this date, wasn't it?

18 MR. BRENNER: Objection. Asked and answered.

19 THE COURT: Sustained.

20 BY MR. RIVERO:

21 Q. All right. Sir, the date of that reinstatement was after
22 Dr. Wright had filed a motion in this court to dismiss the
23 case, right?

24 MR. BRENNER: Objection. Relevance.

25 THE COURT: Sustained.

1 BY MR. RIVERO:

2 Q. Sir, you changed the Sunbiz information to make yourself
3 the manager, right?

4 MR. BRENNER: Objection. Relevance.

5 THE COURT: Overruled.

6 THE WITNESS: It could have been.

7 BY MR. RIVERO:

8 Q. You don't remember that you changed the information in W&K
9 to make yourself the manager?

10 A. No. Like I said, I -- this was all -- the lawyer handled
11 things.

12 Q. Okay.

13 MR. RIVERO: Let me show you what's marked as Joint
14 Exhibit 21.

15 And I ask the admission of Joint Exhibit 21, Your
16 Honor.

17 THE COURT: Admitted into evidence.

18 (Joint Exhibit 21 received into evidence.)

19 MR. RIVERO: And if we can show the jury.

20 BY MR. RIVERO:

21 Q. Sir, this is a reinstatement of W&K on February 18 -- in
22 2018, right?

23 A. It appears to be.

24 Q. And the date that you electronically -- you electronically
25 signed it. You see that?

1 A. Yes.

2 Q. You're not denying you electronically signed it, are you?

3 A. I just -- I don't recall.

4 Q. Okay. You're not saying somebody electronically signed
5 this without your permission, are you?

6 A. No. I just -- I mean, the --

7 Q. Okay. It's April 12, 2018; isn't that right?

8 A. Yes. That's what it says.

9 Q. And that's about two months after the filing of the
10 lawsuit, right?

11 A. Yes.

12 Q. And are you denying to the jury that it was a tactical move
13 to improve your position in this litigation?

14 MR. BRENNER: Objection. Argumentative and relevance.

15 THE COURT: Sustained.

16 BY MR. RIVERO:

17 Q. Now, sir, you yourself are familiar with computers, are you
18 not?

19 A. Yes.

20 Q. You work -- your occupation is in dealing with computers
21 all the time?

22 A. Yes. I work with computers on a daily basis.

23 Q. And -- all right, sir. Let me talk to you briefly about
24 Joseph Karp.

25 Joseph Karp was David Kleiman's lawyer and close friend,

1 right?

2 A. Yes, he was.

3 Q. And he was -- he is your lawyer, too?

4 A. Yes.

5 Q. And he handles your estate matters now?

6 A. Yes.

7 Q. You consulted him about litigation as to this matter at a
8 certain point that we'll look at?

9 MR. BRENNER: Objection. Calls for privileged
10 information.

11 THE COURT: Calls for?

12 MR. BRENNER: Privileged information. He's getting
13 into what he consulted him about.

14 MR. RIVERO: Judge, let me --

15 THE COURT: Yeah. Let's rephrase it so it doesn't
16 reveal --

17 MR. RIVERO: Okay. We'll get there, Judge.

18 BY MR. RIVERO:

19 Q. He's your lawyer, right?

20 A. Yes.

21 Q. Okay. And he's a long-time family friend?

22 A. Yes, he is.

23 Q. And you -- Craig gave Joe Karp permission to speak directly
24 with his Australian lawyer, right?

25 A. That's correct.

1 Q. In other words, it wasn't just that he was having -- he
2 said: "Yeah, you can go" -- he said to you: "You can talk to
3 my Australian lawyer." Right?

4 A. Yes.

5 Q. And you said: "But I want to have my lawyer talk to him,
6 too."

7 And he said: "Yes. That's fine"?

8 A. Correct.

9 Q. Okay. Now. Sir, let's --

10 MR. RIVERO: I want to show you what's been marked as
11 Defendant's 8, just to -- again, witness, counsel and Court.

12 BY MR. RIVERO:

13 Q. Do you recognize this as a letter from the Karp Law Firm?

14 MR. RIVERO: Mr. Shah, if you would show the last page
15 of Defendant's 8 to the witness.

16 BY MR. RIVERO:

17 Q. This is CC'd to you, Mr. Kleiman?

18 A. Yes.

19 Q. You received it at or about the time it was sent?

20 A. I imagine so.

21 MR. RIVERO: Your Honor, I move the admission of
22 Defendant's 8.

23 THE COURT: Any objection?

24 MR. BRENNER: No objection.

25 THE COURT: Admitted into evidence.

(Defendant's Exhibit 8 received into evidence.)

BY MR. RIVERO:

Q. Okay. Mr. Kleiman, this was a letter that Joseph Karp wrote on your behalf to the Department of Treasury of the United States, right?

A. It appears to be.

Q. And this was about potential tax issues, correct?

A. Tax issues? I'm not seeing anything about tax issues in here.

Q. Okay. Let's start -- let's look at it. It's to somebody named Michael Tosi, who is at the Treasury, right?

A. Yes.

Q. And the first line is: "I am writing on behalf of Ira Kleiman"?

MR. RIVERO: If you could highlight that, Mr. Shah.

Yeah.

BY MR. RIVERO:

Q. Do you see that?

A. Yes. I see it.

Q. And he was representing you as to the affairs of the estate of David Kleiman, correct?

A. Correct.

Q. Now, let's go to the third paragraph.

And you got a copy of this at the time, correct?

A. I imagine.

1 MR. BRENNER: Your Honor --

2 THE COURT: I'm sorry?

3 MR. BRENNER: Your Honor, may we take that down for
4 one moment and approach?

5 THE COURT: It's in evidence, sir.

6 You may continue.

7 BY MR. RIVERO:

8 Q. Mr. Kleiman --

9 MR. RIVERO: Judge, may I proceed?

10 THE COURT: You may.

11 BY MR. RIVERO:

12 Q. Mr. Kleiman --

13 MR. RIVERO: Mr. Shah, if you could highlight the
14 first two sentences of Paragraph 3.

15 BY MR. RIVERO:

16 Q. "Ira is David's brother. He had limited contact and
17 personal knowledge as to David's financial affairs throughout
18 David's life." Correct?

19 A. Correct.

20 MR. BRENNER: Your Honor, I have to ask to approach.

21 THE COURT: I'm sorry?

22 MR. BRENNER: I have to ask to approach, Your Honor,
23 and ask that it be taken down during the sidebar.

24 THE COURT: All right. If we can take it down for a
25 moment.

1 (At sidebar on the record.)

2 MR. BRENNER: Your Honor, I'm doing the best I can --
3 so I get a document on my screen. Here's the problem: You
4 have an order on a motion in limine.

5 THE COURT: I do.

6 MR. BRENNER: And I expect -- I expect that I and
7 counsel would try to police that and not put things in front of
8 the jury they know violate that order.

9 And that is the exact issue Your Honor ruled on in the
10 order. And I missed it because it's going quick and it's --
11 whatever. I don't have it in advance on the list. They didn't
12 have to provide me a list in advance, but I think I can rely on
13 that no one's going to try to violate a court order.

14 So I made a mistake. I didn't see it, but it just is
15 a clear violation. It should have never happened.

16 MR. RIVERO: Judge, I don't agree. I think what this
17 does is establish the basis for personal knowledge. It's not
18 about trying to say anything about -- in fact, I haven't talked
19 about --

20 THE COURT: It certainly talks about the sibling
21 relationship. That was directly what the Court ruled upon with
22 regard to the motion in limine. I saw that at the same time
23 that you saw that, Mr. Brenner.

24 But you should know the exhibits. It's not for the
25 Court to tell you. The expectation is that you understand the

1 exhibit before you agree to allow it into evidence. It's now
2 in evidence.

3 MR. BRENNER: Your Honor, I absolutely agree. It's
4 not up to the Court. I absolutely agree. It's my mistake.

5 But I also agree -- I also believe that it is
6 incumbent -- I mean, it's not that it's a close call. This one
7 says: "Never visited his brother in the hospital" --

8 THE COURT: It does. It does.

9 MR. BRENNER: That's directly on point.

10 MR. RIVERO: No, it doesn't, Judge.

11 THE COURT: It does.

12 MR. RIVERO: Judge, it says they didn't have contact.

13 THE COURT: No. No. No. It said he never -- I read
14 it. It says precisely that.

15 MR. BRENNER: So, Your Honor, if you're going to hold
16 me to my error, I understand. You're right. At the end of the
17 day, it's my error. But I don't know how that error happens.
18 I don't know how this document ever gets put up without -- in a
19 non-redacted form.

20 Just like in the exhibit I brought today. I know it
21 has issues that need to be redacted.

22 THE COURT: Listen, I mean, if that fact is not
23 pertinent to what you're seeking to show Mr. Kleiman, then the
24 most important part is to not violate the Court's order.

25 And inadvertent or not, sloppy or not, whatever the

1 issue may have been -- I suspect it's inadvertent. There's
2 many documents.

3 I would suggest that as officers of the court that we
4 agree to redact that portion before it's further shown to the
5 jury. The exhibit will be in evidence, but those portions --
6 as it appears that your technician is able to clearly do -- he
7 can take out those portions.

8 MR. RIVERO: Judge, what I would ask is -- we'll do
9 that now, but I would ask the Court to permit us to address
10 this because Mr. Kleiman has repeatedly put at issue whether he
11 had the ability to observe what was going on, and he said
12 things about his personal knowledge about the circumstances --

13 THE COURT: Well, if you believe that he said anything
14 to open the door with regard to the sibling relationship, he
15 has not.

16 MR. RIVERO: Judge, no. No. What I'm saying is as to
17 the ability to observe events. For example, if there was a
18 statement at the Thanksgiving dinner that his brother was
19 creating something bigger than Facebook, it is not credible
20 that he had no contact with him.

21 THE COURT: But you've exhausted that area of inquiry.
22 You've asked him about the Thanksgiving dinner. You've asked
23 him whether he ever had any other conversations. You've
24 already gone through that.

25 I'm talking specifically about the two sentences that

1 speak of: "Never visited in the hospital," "had no contact
2 with him." And I specifically said that the sibling
3 relationship is not relevant and should not be admissible other
4 than the Thanksgiving Day conversation.

5 MR. RIVERO: Judge, obviously we're going to take it
6 out now, but I just ask you to give me an opportunity --

7 THE COURT: Yes. But the other portions you can use,
8 which is the whole purpose of using it.

9 (End of discussion at sidebar.)

10 (Pause in proceedings.)

11 BY MR. RIVERO:

12 Q. So Mr. --

13 COURTROOM DEPUTY: Mr. Rivero, I'm sorry. Do we put
14 it -- okay.

15 MR. RIVERO: Thank you.

16 BY MR. RIVERO:

17 Q. Sir, let me ask you, then, to continue to --

18 MR. RIVERO: If you would highlight, Mr. Shah.

19 BY MR. RIVERO:

20 Q. "At no time did Ira ever discuss David's financial affairs
21 with him and was never aware of them. His only knowledge was
22 that David was financially strapped and had limited resources."

23 Do you see that?

24 A. Yes, I do.

25 Q. Okay, sir.

1 MR. RIVERO: Mr. Shah, if you would move it up.

2 BY MR. RIVERO:

3 Q. Okay. Now, here it says --

4 MR. RIVERO: If you would highlight this.

5 BY MR. RIVERO:

6 Q. "There was no formal probate proceeding whatsoever."

7 Now, this is in 2015, right?

8 MR. RIVERO: Could you go back to show the entire --
9 the date again.

10 BY MR. RIVERO:

11 Q. This was June 18, 2015, right?

12 A. Yes.

13 Q. You've already been in touch --

14 (Court reporter interruption.)

15 BY MR. RIVERO:

16 Q. You've already been in contact with Craig Wright for almost
17 a year and a half?

18 A. Correct.

19 Q. Okay. You've already said you were very suspicious of
20 Dr. Wright going back to April 15, 2014; isn't that right?

21 A. Yes.

22 Q. So this is long after, almost a year and a half later,
23 right?

24 A. Correct.

25 Q. So let's go back into that -- "There was no formal probate

1 proceeding whatsoever. The reason for this was quite simple.
2 After checking records, David was deep in debt and had no --
3 had outstanding mortgages and liens on his home, which exceeded
4 his potential assets, and it made no sense."

5 That's what your lawyer told the Department of Treasury
6 about this matter, right?

7 A. Yes.

8 MR. RIVERO: Let's go to Page 2.

9 BY MR. RIVERO:

10 Q. Okay. See what you said -- what your lawyer said in the
11 first sentence?

12 MR. RIVERO: If you would highlight that.

13 BY MR. RIVERO:

14 Q. "With regard to W&K LLC or Bitcoins, Ira had no personal
15 knowledge of any of this and has no proof or evidence of what
16 Bitcoins David may own or any information."

17 Now let's continue: "Although he did hear from Dr. Craig
18 Steven Wright that David did have an interest in Bitcoins,
19 Dr. Wright was totally unaware of how to locate them, identify
20 them, or track them. Ira has taken no formal steps to do that
21 himself either."

22 Is that a correct description of the circumstances a year
23 and a half after you had been in contact with Dr. Wright?

24 A. That's somewhat correct. I tried to take formal steps by
25 inviting Dr. Wright to inspect Dave's drives, but he didn't

1 take me up on that offer.

2 Q. You're telling the Department of the Treasury of the United
3 States these facts through your lawyer, right?

4 A. Yes.

5 Q. You were copied, right?

6 A. It appears so.

7 Q. You never did subsequently anything to write to the
8 Department of the Treasury to correct any of these statements;
9 isn't that right?

10 A. That, I'm not sure of. I know that I sent a separate
11 communication to the IRS.

12 Q. You trusted Joe Karp, right?

13 A. Yes.

14 Q. He's a family friend, right?

15 A. Yes, he is.

16 Q. You've known him for a long time?

17 A. Yes.

18 Q. And you trust him?

19 A. Sure.

20 Q. And he -- as a good lawyer, he does what you tell him to
21 do, right?

22 A. Yes. Yes.

23 Q. Okay. Now, let's go down further on this same document.

24 MR. RIVERO: Okay. If we can go to the second -- the
25 next -- the "Ira has no personal knowledge, but rather," with

1 regard to any dealings with Dr. Craig Stephen Wright.

2 And obviously this is a document admitted that the
3 jury will have access to.

4 BY MR. RIVERO:

5 Q. "The only information Ira has is that information which was
6 transmitted by Dr. Wright." That's consistent with what you
7 have said; isn't that right?

8 A. Yes.

9 Q. "He never heard of Dr. Wright from David, nor in cleaning
10 up David's papers or affairs were anything located which
11 indicated Dr. Wright, Bitcoins, or any of the business dealings
12 that he may have had with Dr. Wright." Isn't that right?

13 A. That is right.

14 Q. Then he continues to say the same as to W&K: "The only
15 information would have been transmitted by Dr. Wright."

16 What does this mean, I think referring to you: "He has no
17 independent recollection of any of the documents or
18 transmissions that were provided. Those records have not been
19 destroyed by him and would be available, if required to provide
20 the same"?

21 Is that referring to documents provided by Dr. Wright?

22 A. Perhaps.

23 Q. Okay. All right. I just want to make sure -- this is a
24 very thorough statement. So I want to make sure that we --
25 that the jury's able to see it.

1 Okay. So look at this paragraph that starts: "With regard
2 to anything with W&K LLC's business activities," and then it
3 says: "The information is only from Dr. Wright." Correct?

4 A. Yes.

5 Q. "There were no records left by David that -- which Ira was
6 aware, nor did Ira receive any third-party confirmation other
7 than questions raised by the Australian authorities several
8 years ago." Right?

9 A. Yes.

10 Q. In other words, you didn't have it yourself?

11 A. Correct.

12 Q. You didn't have it from a third party other than
13 Dr. Wright?

14 A. Right.

15 Q. Let me just -- we can skip forward, I think.

16 And there's a summary: "Any information" -- at the very
17 bottom.

18 "Any information Ira received was initiated by contact by
19 Dr. Wright to Ira, whom he had never heard of before David's
20 death and had been contacted by Dr. Wright."

21 I'm not sure what the last phrase means, but it was the
22 information came from Dr. Wright, who reached out to you?

23 A. That's correct.

24 MR. RIVERO: Let's just see if there's anything on the
25 last page.

1 BY MR. RIVERO:

2 Q. Oh. And he says the obvious. This is what I was asking
3 you about. If -- your view and Mr. Karp's view is: If there
4 was anything found for the estate, you would be the ultimate
5 beneficiary, correct?

6 A. That was my understanding, yes.

7 MR. RIVERO: All right. We can put that down,
8 Mr. Shah.

9 BY MR. RIVERO:

10 Q. Now, sir, I was trying to ask you before and I'm going to
11 ask Mr. Shah to show you -- we'll start with 284.

12 In 284 -- this is one of the -- you just got contacted by
13 Craig Wright right around this time, right?

14 A. Yes.

15 Q. Okay.

16 MR. RIVERO: If we could go towards the -- just go
17 down to the bottom.

18 Judge, if I haven't already moved it into admission --
19 I think I may have --

20 THE COURT: It's in evidence.

21 MR. RIVERO: I thought so.

22 BY MR. RIVERO:

23 Q. Okay. We saw some of this, but this is -- you're talking
24 with Dr. Wright right in mid-February 2014, not long after you
25 are introduced to him, correct?

1 A. Correct.

2 Q. By Patrick Paige, who is the intermediary?

3 A. Yes.

4 Q. You say, you know, this is about -- you weren't able to
5 locate other related files, et cetera.

6 MR. RIVERO: Let's see Craig's response.

7 BY MR. RIVERO:

8 Q. Oh, this is -- this is Craig Wright, Dr. Wright, writing to
9 Uyen about you and saying: "Please ensure we cover all we can
10 for Ira." Right?

11 A. Yes.

12 Q. Okay.

13 MR. RIVERO: Let's go to the next one. We already saw
14 this. "He was hard up for money."

15 Let's keep going down -- or up, I guess I should say.

16 Is that the end of it?

17 Okay. Let's now go to Defendant's 285.

18 All right. And, Mr. Shah, it's going to be a little
19 bit tricky, but I think it is a continuation of 284, so if you
20 could go down until --

21 BY MR. RIVERO:

22 Q. First of all, Mr. Kleiman, is this an email chain of
23 communications between you and Craig Wright in that same period
24 of time, December [sic] 15?

25 A. Yes, it is.

1 Q. December 15 and 16?

2 A. Yes.

3 Q. February 15 and 16. Sorry about that.

4 MR. RIVERO: Judge, I would move the admission of
5 Defendant's 285.

6 MR. BRENNER: It's 10 pages, Your Honor. Can we
7 review it?

8 THE COURT: It's in evidence.

9 MR. RIVERO: Thank you.

10 Could you go up -- I'm sorry.

11 Could you go down to -- further in -- okay.

12 Mr. Shah -- just go up a little bit further to the
13 earlier -- to the ones up at the top.

14 Right.

15 Okay. And then the next one.

16 BY MR. RIVERO:

17 Q. Okay. This is on February 16 you're writing to Craig
18 Wright --

19 MR. RIVERO: This is published?

20 Yeah.

21 BY MR. RIVERO:

22 Q. Let's see what you say: "Hi Craig. Thanks for the links.
23 It certainly appears you were very close with him." Right?

24 A. Yes.

25 Q. You could see that just looking at some kinds of computer

1 links that were provided?

2 A. Yes.

3 Q. In fact, you came to find out that there was a co-published
4 paper between -- with Craig Wright and David Kleiman that was
5 having to do with something called "The Data Wipe Fallacy."
6 Have you heard that?

7 A. Yes.

8 Q. And that has to do with whether when one overwrites a hard
9 drive, it -- doing that one time is enough to wipe out the data
10 or whether you have to do several overwrites. You know that?

11 A. I think I recall at my deposition the attorney bringing
12 that up. Yes.

13 Q. Okay. So you say: "I apologize if I am asking too many
14 questions and don't mean to frighten you away with them. It's
15 just that since hearing this news about Dave, it kind of
16 shocked me. Yesterday, I was feeling skeptical about the whole
17 story because it sounds like something out of a James Bond
18 movie. But after our email exchange and seeing the video you
19 left about him after his passing, I feel that you are genuine
20 and that you guys really did work closely together.

21 "I hope we can chat some more -- more sometime about him.
22 I bet there are many things you know about him that I don't and
23 vice versa." Right?

24 A. Yes.

25 Q. This is an early email, correct?

1 A. Yes.

2 Q. And you're being friendly with Dr. Wright?

3 A. Yes.

4 Q. And you're saying: "Hey, sorry about so many questions."

5 A. Yes.

6 Q. "Don't want to scare you away." Right?

7 A. Yeah.

8 Q. Now, sir, isn't it true that within days of this email,
9 within days, you were considering litigation against
10 Dr. Wright?

11 A. That, I do not recall.

12 Q. Well, sir, do you recall that you went -- that you
13 started --

14 MR. RIVERO: One moment, Judge, because --

15 BY MR. RIVERO:

16 Q. Isn't it true that by February 25 --

17 (Court reporter interruption.)

18 MR. RIVERO: Oh, sorry.

19 BY MR. RIVERO:

20 Q. Isn't it true that by February 25, within nine days, you
21 were talking to a lawyer about litigation?

22 A. I'd like you to show -- I don't remember anything like
23 that. But ...

24 MR. RIVERO: I'm going to ask Mr. Shah to show, only
25 to you and to counsel and the Court, Defendant's log --

1 sorry -- Defendant's 193. And I'm going to ask, Mr. Shah, that
2 you move to Page 19 of 38 -- first, I'll ask counsel if they're
3 familiar with the document to make sure -- let me know
4 because --

5 MR. BRENNER: It's -- Your Honor, it's -- you have the
6 same thing. I can't -- I know what it is, but I can't read
7 anything on it.

8 MR. RIVERO: All right. So Judge, I just want to make
9 sure it's -- that counsel are familiar with it so they can
10 state whatever objection they need to.

11 I'm going to ask you to -- Mr. Shah, if you would blow
12 up the entry that is at Page 19 that is dated 2/25/2014,
13 February 25, 2014.

14 MR. BRENNER: Your Honor, I -- we'll have an
15 objection. Just, counsel -- I just don't want counsel to start
16 publishing the content of it. If we need to lay a foundation,
17 we shouldn't need to read any information on it. But we will
18 have an objection to this. So ...

19 MR. RIVERO: Mr. Shah, can you pull it out further.
20 Maybe -- we don't need the control number -- I meant so we
21 could see it more. If you could just focus on the columns from
22 the date on the other side. The control number doesn't
23 particularly matter.

24 Do you understand?

25

1 BY MR. RIVERO:

2 Q. Okay. Now, do you see that, Mr. Kleiman?

3 A. Yes. I see it.

4 Q. Do you recognize this is a document that your side has
5 produced in this litigation?

6 A. It might be. I don't know what the document is.

7 Q. Okay.

8 MR. RIVERO: Okay. Judge, I want to refresh the
9 recollection of the witness right now. So right now --

10 THE COURT: Well, then let's take this down and you
11 can refresh recollection with another document.

12 Is this something you're seeking to admit at this
13 time?

14 MR. RIVERO: Not right now. I want to refresh
15 recollection. I'm showing it to the witness.

16 BY MR. RIVERO:

17 Q. Sir, isn't it true -- you said you don't remember?

18 A. Yes.

19 Q. Isn't it true that by February 25 --

20 MR. BRENNER: Your Honor, that's not refreshing
21 recollection to read to the jury what the document says.

22 THE COURT: Is there --

23 MR. BRENNER: Objection. It's improper --

24 THE COURT: Objection is sustained.

25 Is there a document that you want to show the witness?

1 MR. RIVERO: I am showing the witness the document.

2 THE COURT: Well, right. But he -- the witness
3 questioned whether there was a document that --

4 MR. RIVERO: Oh, I'm glad to show -- I actually do
5 have this and we can connect it. I just have to get the
6 number, Your Honor.

7 (Pause in proceedings.)

8 MR. RIVERO: Okay. Yes. Judge, I appreciate it.
9 Yeah.

10 BY MR. RIVERO:

11 Q. You saw what I just showed you because they work together?

12 A. Yes.

13 Q. Okay.

14 MR. RIVERO: So I'm going to show you now a document
15 that's Defendant's 399. Only to the witness and counsel and
16 the Judge.

17 BY MR. RIVERO:

18 Q. Now, do you see the document, number one?

19 A. Yes. I see it.

20 Q. And sir, this is a document -- I'll ask you to look at
21 the -- there's a lot of redaction, right?

22 A. Right.

23 Q. And then -- but on Page -- on the -- on the second page,
24 there's a reference to UT Uyen, right?

25 A. It's to her LinkedIn page.

1 Q. And then on the next page, there's things to do. Do you
2 see that?

3 A. Yes.

4 Q. That's a to-do list of yours, is that not?

5 A. I believe so, yes.

6 Q. And there's a redaction in the to-do list?

7 A. Okay.

8 Q. Yeah. And sir, this document with the redactions --

9 MR. RIVERO: If we can go back to Defendant's 193,
10 sir.

11 BY MR. RIVERO:

12 Q. -- sir, is the document referred to at this entry that I'm
13 showing you. Do you remember the document now?

14 A. Yes, I do.

15 MR. RIVERO: And can we blow out the -- blow out here,
16 Mr. Shah, just that half of the -- okay, sir.

17 BY MR. RIVERO:

18 Q. That document is -- this document that doesn't have a date
19 that I can see on it, is dated -- do you remember now it's
20 February 25, 2014?

21 A. Yes.

22 Q. Okay. And this was redacted, correct?

23 A. Yes.

24 Q. You remember that?

25 A. Yes.

1 Q. And it was redacted, do you recall now, because it was in
2 anticipation --

3 MR. BRENNER: Your Honor, I object to what counsel --

4 THE COURT: The objection is sustained.

5 MR. RIVERO: Your Honor, may I -- on this, I would ask
6 for an opportunity to talk to the Court, because I'm not sure I
7 understand the ruling.

8 THE COURT: You may certainly question the witness
9 without reference to this document.

10 MR. RIVERO: Judge, I -- I hate to impose, but if I
11 could ask for sidebar on this.

12 THE COURT: Come on forward.

13 (At sidebar on the record.)

14 MR. RIVERO: I apologize, Your Honor. I'm trying to
15 establish what I think is the relevant point that during the
16 time of these email exchanges, that Mr. Kleiman and counsel has
17 tried to represent as innocent exchanges, where -- you know,
18 this just what happened to be -- that, in fact, our theory is
19 that Mr. Kleiman was trying to set up litigation.

20 So I'm what trying to establish is that within 10 days
21 of all this correspondence going out, he's consulted with
22 counsel in anticipation of litigation. In fact, there are a
23 number of those entries.

24 But to do that, Judge, I'm not sure of the Court's
25 ruling because I don't know how to establish --

1 THE COURT: But you're using the privilege log as a
2 sword, and it's not to be referred to. And if -- you
3 referenced the date. You can ask him whether that was the
4 first time that he anticipated litigation. But you're
5 referring to the actual privilege log and it's improper.

6 MR. RIVERO: It's only for refreshing recollection.

7 THE COURT: But you then showed him the notes that he
8 made.

9 MR. RIVERO: Right.

10 THE COURT: They were heavily redacted. And then you
11 went back to the privilege log.

12 MR. RIVERO: Okay. So Judge, is the problem that I'm
13 referring to the fact that there's a document redacted in
14 anticipation of litigation? Is that the issue?

15 THE COURT: Mr. Brenner?

16 MR. BRENNER: Your Honor, he's asked the witness if he
17 was consulting with counsel then. He said he wasn't. That's
18 his answer. Nothing about the privilege log says that he's
19 consulting with counsel.

20 Okay. First of all, you could have lots of things
21 that are work product before you're consulting with counsel.
22 He could be collecting communications with Dr. Wright.

23 So first of all, there's nothing -- he said nothing
24 inconsistent. If they wanted to challenge the redactions or
25 the privilege, they could have done that with Your Honor, and

1 I'm sure Your Honor would have gone through procedures. And
2 they never did that.

3 THE COURT: Well, that's separate and apart from
4 asking Mr. Kleiman the question with reference to the privilege
5 log.

6 If the intent is to determine when Mr. Kleiman may
7 have anticipated litigation, which is the question, I'm not
8 certain why you're -- are you objecting to the reference to the
9 privilege log?

10 MR. BRENNER: I'm objecting to all reference to the
11 privilege log for sure.

12 THE COURT: Okay. So why can't you just ask the
13 question without reference to the privilege log? You've shown
14 him the notes to refresh his recollection.

15 MR. RIVERO: Judge, I just want to clarify one thing.

16 I think something -- maybe I've misunderstood this.
17 But I don't think anyone can claim work -- an individual -- if
18 I want to sue somebody, I cannot just start writing things
19 down, unless I'm acting at the direction of the lawyers. It's
20 called the attorney/client -- the attorney work product.

21 So what Mr. Brenner said is not correct. He must have
22 been -- been consulting with a lawyer on that day in order for
23 him to claim privilege.

24 THE COURT: Then ask him: "In February 2014, was that
25 the first time that you anticipated that you were going to" --

1 MR. RIVERO: Yeah. I'm sorry, Judge. It's just --
2 here's the problem: There is sort of -- if he says no, it's
3 false, and I'm entitled to impeach. That's where I'm getting a
4 problem.

5 THE COURT: Right. The problem is you can't impeach
6 him with a privilege log. That's where you're using it as a
7 sword. That's where I have a concern that you're delving into
8 what is privileged information. It hasn't been litigated
9 before the Court and it's deemed to be privileged.

10 MR. RIVERO: Right, Judge. I'm not looking to lift
11 the redaction. All I'm looking to establish is that as of that
12 date that he was consulting with a lawyer. And the way I can
13 establish it is because they've asserted privilege. I don't
14 want to challenge privilege and say they don't have a right to
15 a privilege. I'm just trying to establish not whether or not
16 it's privileged, but that he consulted with a lawyer.

17 THE COURT: But you never -- did you ask him: "In
18 February of 2014, which is the date of the document -- was that
19 the date that you anticipated litigation?"

20 MR. RIVERO: Judge, I think he said -- I will ask him
21 again, Judge. But I think he said he didn't remember.

22 THE COURT: All right. So now you've refreshed
23 recollection. Now you're asking it again.

24 MR. RIVERO: I'm sorry, Judge. I was just trying
25 to --

1 THE COURT: Yeah. No, no, no. I just -- I don't want
2 to spend a lot of time on something I'm not going to let it in.

3 MR. BRENNER: Yeah, just before we leave sidebar, he
4 can try to refresh recollection and show it to him. He already
5 said that the document he showed him, the privilege log, he
6 doesn't know anything about. So I don't know what else -- if
7 there's another document he wants to --

8 THE COURT: He wasn't the one that redacted it. He
9 wasn't the one that put it on a privileged log. It was his
10 attorneys.

11 So you're using the attorneys' privilege log against
12 the witness. And it's --

13 COURT REPORTER: I can't hear you, Mr. Rivero.

14 MR. RIVERO: The lawyer acts as a representative of
15 the --

16 THE COURT: But not to the point that it's going to
17 expose what may be privileged communication.

18 MR. RIVERO: I have no interest in getting behind the
19 redaction. I only want to get to the fact that there was some
20 consultation that gives them a basis.

21 THE COURT: Right. But if we take it to its logical
22 conclusion, you would then show his notes with the heavily
23 redacted portion, and that would be improper.

24 MR. RIVERO: No. I don't need to do that, Judge.

25 THE COURT: Okay. So why don't you just ask him

1 outright.

2 MR. RIVERO: All right.

3 (End of discussion at sidebar.)

4 BY MR. RIVERO:

5 Q. Mr. Kleiman, isn't it true that by February 25, 2014, you
6 were in -- you were in anticipation -- you were in an
7 anticipation of litigation?

8 A. If I was, I don't remember it.

9 Q. Nothing I've shown you refreshes your recollection?

10 A. Not from the document that's redacted, no.

11 Q. All right.

12 MR. RIVERO: And sir, I want to show you what's been
13 marked as 733, I believe Plaintiffs' 733.

14 BY MR. RIVERO:

15 Q. Now, you were shown this -- you were shown this during the
16 Plaintiffs' case. Do you remember?

17 A. Yes.

18 MR. RIVERO: Judge, I believe it's in evidence.

19 THE COURT: Yes. It's in evidence.

20 MR. RIVERO: May we publish to the jury?

21 THE COURT: You may.

22 MR. RIVERO: Mr. Shah, could you go further up.

23 BY MR. RIVERO:

24 Q. This is where you tell all this Thanksgiving Day story to
25 Dr. Wright, right?

1 A. Yes.

2 Q. And at the end of it -- let's see here -- what did you say
3 at the end of telling this story: "I was wondering if you were
4 aware of any business cards ever being printed with the Bitcoin
5 logo on it. I never found any in his belongings. I wasn't
6 sure if he was opening his wallet to show me a Bitcoin
7 business -- or if he just wanted to grab an existing card to
8 draw the logo on the back of it."

9 Do you remember?

10 A. Yes.

11 Q. You're trying to draw Dr. Wright out, aren't you?

12 A. What's that?

13 Q. You're trying to draw him out on this subject?

14 A. To draw him out?

15 Q. You're trying to draw him out on this subject, aren't you?

16 A. I don't know what you mean.

17 Q. All right, sir. Let's go further up. Dr. Wright answers
18 you.

19 MR. RIVERO: Further up, Mr. Shah, to the next email.

20 BY MR. RIVERO:

21 Q. And then, Mr. Wright -- oh, you say -- this starts with:

22 "I thought I would share this memory of Dave I had." Right?

23 A. Yes.

24 Q. And then Dr. Wright makes his comments that were already
25 published to the jury and discussed, and you respond: "I think

1 this logo he drew for me only had -- only line going through
2 the 'B,' not two." Right?

3 A. Yes.

4 Q. We've gone over this before, but it's just this again,
5 right? And you're trying to continue this conversation with
6 him, right?

7 A. Trying?

8 Q. You're continuing the conversation with him at this point,
9 May 20th, 2014, right?

10 MR. RIVERO: Let's look at the next email up.

11 BY MR. RIVERO:

12 Q. And that's where Dr. Wright sends back a bunch of logos.

13 By the way, do you see this one? It says: "Here. This is
14 the first of the first"?

15 A. Yes.

16 Q. And then you see, he says there's a later version and then
17 there's another version, which is this third one before he gets
18 to that final one, right?

19 A. Yes.

20 Q. Okay. And sir, isn't it true that by this date you had
21 consulted with a lawyer named Warren Brams on -- in April of
22 2014 about litigation?

23 A. Not about litigation. I believe that was -- my dad, I
24 believe, hired him to do some estate-planning work. He's not a
25 litigation attorney, no.

1 Q. All right, sir. I want to show you -- I want to show you
2 Defendant's 193 at Page 28.

3 MR. RIVERO: Mr. Shah, the same thing. If you would
4 go to the entry that shows April -- this is only to the
5 witness -- April 22nd, 2014.

6 MR. BRENNER: Your Honor, same objection that we just
7 discussed.

8 MR. RIVERO: I'd like to show it at least --

9 THE COURT: He's just showing it.

10 MR. RIVERO: -- to the witness and to the Court.

11 THE COURT: All right. So let's continue at this
12 point.

13 MR. RIVERO: Thank you.

14 Mr. Shah, could you hone in on the entry for
15 April 22nd, 2014, on Page 19 of -- yeah, 422.

16 Okay. And it's the same thing. You can show just
17 this half, Mr. Shah, because the other control number's not so
18 important.

19 Okay. You got to show it, but you got to show it all
20 the way down to the end, Mr. Shah, so we can see.

21 Your Honor, may I -- I'm going to glance over
22 Mr. Shah's shoulder.

23 (Pause in proceedings.)

24 BY MR. RIVERO:

25 Q. Sir, I may have the name of the attorney wrong. You were

1 consulting with an attorney about research you had -- you
2 had -- about your research about litigation on April 22nd,
3 2014, were you not?

4 MR. BRENNER: Your Honor, objection to using the
5 substance of the document.

6 THE COURT: I'm sorry?

7 MR. BRENNER: Objection. He's reading from the
8 document.

9 THE COURT: I agree. So why don't we just ask the
10 question outright: "Do you recall, sir?"

11 BY MR. RIVERO:

12 Q. Sir, do you recall that you had done research related to
13 litigation by April 22nd, 2014?

14 A. I do not recall that, no.

15 Q. And nothing about this document refreshes your
16 recollection?

17 A. There's nothing on this document.

18 MR. RIVERO: Your Honor, I would request the right to
19 impeach, but I think that I understand the Court's ruling.

20 THE COURT: All right. Let's continue, then.

21 BY MR. RIVERO:

22 Q. Sir, and then you --

23 MR. RIVERO: If you would show Page --

24 BY MR. RIVERO:

25 Q. Sir, you later talked to somebody named J. McKeon at Karp

1 Law in that same summer, correct?

2 A. I think you might be referring to Mr. Karp's assistant or
3 secretary or something like that.

4 Q. Okay. So you sent material to J. McKeon on August 14, 2014
5 related to litigation that you were planning?

6 A. No. I was informing Mr. Karp that Craig had reached out to
7 me and I was telling them about Craig, but I had no intention
8 of litigation, no.

9 MR. RIVERO: Judge, I will have a motion to make based
10 on the testimony on all three items --

11 THE COURT: All right.

12 MR. RIVERO: -- but I will continue.

13 THE COURT: Mr. Kleiman, could you speak a little
14 louder in the microphone? We're having a problem hearing you,
15 sir.

16 THE WITNESS: Sorry.

17 BY MR. RIVERO:

18 Q. You started feeding information to the Australian Tax
19 Office to try to get them to reopen investigations on Craig
20 Wright, did you not?

21 A. I'm not sure what you're referring to.

22 MR. RIVERO: Can we show -- okay. Can we show RM3111
23 to the witness and counsel.

24 THE COURT: And where would the Court find RM3111? Is
25 that one of the exhibits?

1 MR. RIVERO: No. Judge, it's a document in the case.
2 So right now I'm attempting to refresh his recollection.

3 MR. BRENNER: Can we request a hard copy of that?

4 MR. RIVERO: No. This is not -- I'm sorry. This is
5 not -- I meant to say -- I'm sorry. I meant to say RM849.

6 BY MR. RIVERO:

7 Q. Sir, does this refresh your recollection that you were in
8 communications with the ATO about attempting to get information
9 from them related to Craig Wright?

10 A. I think this came after they contacted me and they were
11 asking more questions. And then I responded back to them.

12 Q. Well, it's a simple question, sir. And I'll ask you to
13 look at the third sentence of the email.

14 THE COURT: If this document is being shown to the
15 witness, it needs to be identified in some form.

16 MR. RIVERO: Judge, you're right. If we can just --
17 we'll identify it, Judge. I think we can safely identify it as
18 Defendant's 1100 for purpose of identification.

19 THE COURT: All right.

20 MR. BRENNER: Can we just see the document? All I
21 have is one page on the screen. If it's just one page, that's
22 one thing.

23 MR. RIVERO: Mr. Shah, can you show the entire
24 document to counsel.

25 MR. BRENNER: I'm a fast reader, but not that fast,

1 so --

2 (Pause in proceedings.)

3 MR. BRENNER: Do you have a hard copy?

4 MR. RIVERO: No.

5 MR. BRENNER: No.

6 (Pause in proceedings.)

7 MR. BRENNER: Your Honor, just so the Court knows, I
8 have nothing to review. It's just stuck on Page 5. I can't
9 review the document.

10 MR. RIVERO: All right. Judge, what I would ask
11 Mr. Shah to do is show page by page, show the Plaintiffs'
12 counsel so that he can look at the document.

13 MR. BRENNER: Go to Page 1, please.

14 (Pause in proceedings.)

15 MR. BRENNER: Ready for the next page.

16 (Pause in proceedings.)

17 MR. BRENNER: Okay. The page numbers go to nine, but
18 seems like I only saw -- it's not in page order, so I don't
19 know how many pages it is.

20 THE COURT: All right. So it's nine pages, D1100.

21 MR. BRENNER: Can I see Page 3, please.

22 MR. RIVERO: Correct, Judge.

23 MR. BRENNER: Can I see Page 2, please.

24 (Pause in proceedings.)

25 MR. BRENNER: Page 3, please.

1 MR. RIVERO: I would just ask Mr. Kleiman to try to
2 look at it now because that way we don't have to do it again.

3 MR. BRENNER: Four, please.

4 (Pause in proceedings.)

5 MR. BRENNER: Five, please.

6 (Pause in proceedings.)

7 MR. BRENNER: We've seen all nine pages. Thank you,
8 Your Honor.

9 BY MR. RIVERO:

10 Q. Okay. Sir, does this refresh your recollection that you
11 were in communication with the ATO and you had asked them
12 whether they could release information to you because you were
13 the director of W&K?

14 A. Yes. I believe so.

15 Q. Okay. And sir, I'm going to see if we can show you what's
16 been marked as Defendant's 256.

17 And sir, this is in the summer of July 2017 [sic]. And you
18 are in communication with the Australian Tax -- Taxation
19 Office, right?

20 A. 2015, you mean?

21 Q. I'm sorry. I couldn't understand you.

22 A. 2015?

23 Q. 2015.

24 A. Yes.

25 MR. RIVERO: All right. And Judge, I would move the

1 admission of Defendant's 256.

2 MR. BRENNER: No objection.

3 BY MR. RIVERO:

4 Q. Now, sir, you were --

5 THE COURT: Admitted into evidence.

6 (Defendant's Exhibit 256 received into evidence.)

7 MR. RIVERO: If we could publish that to the jury.

8 What you were doing -- go down to the bottom.

9 BY MR. RIVERO:

10 Q. Okay. This is an email address you have called
11 wrightkleiman@gmail.com, right?

12 A. Yes.

13 Q. It's another email among the 30 that you use?

14 A. Yes.

15 Q. You have no affiliation with Dr. Wright, do you?

16 A. No. I had set that up just for this kind of stuff, just
17 for, I guess, discussing W&K-related things.

18 Q. And what you're doing during the course of July 2015, in
19 the summer of 2015, is you're submitting information to the
20 ATO, aren't you?

21 A. I believe I only responded to their questions.

22 Q. Okay. Let's look further up.

23 Sir, you say -- they say to you: "Hi, Mr. Wright. Yes, I
24 received these three attachments and can open them." Right?

25 A. Yes.

1 Q. And then you respond -- this is definitely to a revenue
2 agent at the Australian Tax Office, right?

3 A. I think this is the IRS, isn't it?

4 Q. The Australian -- the equivalent of the IRS in Australia,
5 right?

6 A. No. This is the IRS.

7 Q. Oh, you're actually submitting -- well, it says -- it says:
8 "Subject EOI Case Reference Number 362215, Australia Case
9 Number -- Reference Number 6BOK5GO."

10 A. The IRS was sending questions on behalf of the ATO.

11 Q. I see. I see. So you were in touch with the IRS about
12 this?

13 A. Yes. They reached out to me and then I responded.

14 Q. Okay. And then you say you're checking about the third
15 email you've sent with nine more attachments, right?

16 A. I guess so.

17 Q. And you have to explain to them --

18 MR. RIVERO: If you'll highlight the PS, Mr. Shah.

19 BY MR. RIVERO:

20 Q. -- that: "This account is only operated by Ira Kleiman,
21 nothing to do with Mr. Wright. Didn't mean to confuse you by
22 naming the email address wrightkleiman@gmail.com." Right?

23 A. Correct.

24 Q. Could lead to confusion?

25 A. Yeah.

1 Q. That's what you were explaining?

2 A. Right. I didn't mean to confuse them, yes.

3 Q. Okay. Now, just in this series --

4 MR. RIVERO: If you could show what's been marked
5 RM849 --

6 Judge, we're going to, for identification purposes,
7 make this Defendant's 1101.

8 I'm sorry. Could you take it down for a moment.
9 Just -- okay.

10 BY MR. RIVERO:

11 Q. Isn't it true that, though -- don't you remember that what
12 you were saying to the ATO is that if they couldn't send you
13 new information, would they be able to talk with you about it?
14 Do you remember doing that?

15 A. Are you referring to the IRS people or the ATO people?

16 Q. Well, sir, I guess you're making a clarification. Either
17 one.

18 Were you talking to the IRS and saying: "Hey, if you can't
19 give me new information, can you at least discuss with me what
20 I've already sent you"? Do you remember doing that?

21 A. I think so.

22 Q. Okay. And then do you also remember saying to them -- do
23 you have any recollection of asking the IRS for the ATO that if
24 the ATO had finished an investigation and come to a settlement
25 with an individual, could the case be reopened? Do you

1 remember that?

2 A. I don't remember it. I may have said that, but I don't
3 remember.

4 Q. Let me show you --

5 MR. RIVERO: Did we mark RM31 -- okay. Show RM3111.

6 And we'll mark that as Defendant's 1102, Your Honor.

7 BY MR. RIVERO:

8 Q. I know you said you didn't recall. Does this refresh your
9 recollection of having said to -- actually, to the ATO that --
10 or asking them if they'd finished an investigation and settled
11 with somebody, could that case be reopened if new information
12 was given? Do you remember that?

13 A. I may have. Yeah.

14 Q. My question is simply: Does this refresh your recollection
15 to having said that to the ATO yourself?

16 A. Yeah. I think I did say that, yes.

17 Q. Okay. And the reason you were saying that was that you
18 wanted to put more information in to see if the ATO would go
19 after Wright again after the case was closed; isn't that right?

20 A. I'm -- I honestly -- I don't remember.

21 Q. Okay. Now, you do know that starting in November of 2012
22 David Kleiman hadn't been able to continue as an expert in a
23 case called -- I'm sorry. I'm switching topics to now the
24 state of Mr. Kleiman's health in the last period of his life.

25 You understand the topic?

1 A. (No verbal response.)

2 Q. Yeah. Do you remember that Mr. Kleiman could not work as
3 an expert in a certain case, US Garcia, because of health
4 problems for the months of September and October into November
5 of 2012?

6 A. I don't have any knowledge of that.

7 MR. RIVERO: Let me show you Exhibit -- Defense
8 Exhibit 40.

9 BY MR. RIVERO:

10 Q. Sir, this is an email from David Kleiman to somebody
11 named -- it appears to be -- I don't know what the initials
12 mean, but persons located in, looks like, Gulfport, Pensacola,
13 and Jacksonville. Do you see that?

14 A. Yes.

15 Q. And do you see the signature block? It's: "Respectfully,
16 David Kleiman, 4371 Northlake Boulevard, 314?

17 A. Yes.

18 Q. Is that consistent with Mr. Kleiman's emails?

19 A. Yes, I believe so.

20 MR. RIVERO: Judge, I move the admission of
21 Defendant's D40.

22 MR. BRENNER: No objection.

23 THE COURT: Admitted into evidence.

24 (Defendant's Exhibit 40 received into evidence.)

25

1 BY MR. RIVERO:

2 Q. Okay, sir --

3 MR. RIVERO: If we can publish that to the jury.

4 BY MR. RIVERO:

5 Q. It is the case, is it not, that as of November 4, 2012,
6 Mr. Kleiman was telling a group of people that -- he's writing
7 about a case called US v. Garcia and he says: "Expert." Do you
8 see that?

9 A. Yes.

10 Q. And he says: "All, it is with deepest regret that I have
11 to inform you that I am unable to continue to assist as the
12 expert in the matter of US v. Garcia for medical reasons."
13 Correct?

14 A. Yes.

15 Q. He goes on to explain that he -- it's there in the next
16 paragraph.

17 He goes on to explain -- if you will just let me know if
18 I'm summarizing this correctly -- that he had thought he could
19 continue working, but he had a setback, right?

20 A. Yes.

21 Q. And so I just want to get to this -- okay.

22 And, in fact, what he says is that he was unable to conduct
23 any examination before the second week of October, "And this
24 was because in my final stage of physical therapy at the
25 Veterans hospital, I was in the final stage and was only

1 traveling home on the weekends. Unfortunately, I have had a
2 setback." Right?

3 A. Yes.

4 Q. And so my question is: Do you remember that he had a lot
5 of trouble and wasn't able to perform his work in this time
6 period, September, all the way to the beginning of November?

7 A. I don't remember that.

8 Q. Okay. Let me show you Defendant's 254. I'm going to just
9 show you and counsel and the Court.

10 MR. BRENNER: How many pages of a document is it?

11 MR. RIVERO: Yeah, could we flip through, Mr. Shah.

12 (Pause in proceedings.)

13 MR. BRENNER: Is this a joint exhibit, Mr. Rivero?

14 MR. RIVERO: It is, in fact -- thank you, Mr. Brenner.
15 It is Joint Exhibit 99. Yeah.

16 So Your Honor, I would ask admission and to publish
17 it.

18 THE COURT: Admitted into evidence.

19 (Joint Exhibit 99 received into evidence.)

20 MR. RIVERO: Mr. Shah, do me a favor. Would you go to
21 the email of March 28th, 2014.

22 Yeah, right.

23 Actually, let's see the beginning so we can get the
24 context and you can show the ones below.

25 Okay.

1 BY MR. RIVERO:

2 Q. You're saying to Mr. Wright that you question what you
3 could have done: "If I'd done things differently is when it
4 hurts the most," et cetera.

5 So then Mr. Wright responds to you --

6 MR. RIVERO: If we can go to Dr. Wright's.

7 BY MR. RIVERO:

8 Q. Dr. Wright describes medical setbacks he had had and his
9 emotions about the death of Dave, correct?

10 A. Yes.

11 Q. Okay. Let's see what your response is.

12 MR. RIVERO: Okay. Is that the beginning, Mr. Shah?
13 Because I didn't see the time and the date.

14 BY MR. RIVERO:

15 Q. Okay. This is from you to Craig Wright on March 28th, 2010
16 [sic], right?

17 A. Yes.

18 Q. 2014, pardon me.

19 And you say: "I think he succumbed to the same thing that
20 initially put him in the hospital, depression from his overall
21 decline in health. It was getting harder for him to move
22 around and do things for himself."

23 You comment here in the next paragraph -- and I ask you to
24 read it to yourself, but I just want to get the facts on this.

25 He had a friend named Jody, who was a younger man, maybe in

1 his 30s, who was a very close friend of his?

2 A. Yes.

3 Q. And that man really helped him out in terms of helping him
4 to be mobile and having access to his computer and that kind of
5 stuff, correct?

6 A. That's what I heard, yes.

7 Q. Okay. Did you ever meet Jody?

8 A. No, I didn't.

9 Q. Okay. But Jody -- you did hear Jody was really helping
10 David?

11 A. Yeah. A lot of this information that I provided in this
12 email was like provided to me, you know, from other people.

13 But yes, I just -- I only heard of Jody from third parties,
14 yes.

15 Q. But the sources that you turned to, I assume, were Patrick
16 Paige, Carter Conrad --

17 A. Yes.

18 Q. -- and Kimon Andreou?

19 A. Not Kimon. I think just mostly Patrick and my dad.

20 Q. Okay. And then you say -- I mean, it's there, and the jury
21 can see it -- "At the hospital, Dave had to be treated for a
22 bad MRSA infection, along with holes in his back from the skin
23 breaking down."

24 I mean, this was really bad stuff, right?

25 A. Yeah. Yes.

1 Q. You say: "He was going through a lot." And this is the
2 end of that paragraph: "He was going through a lot. And after
3 being there for two years, with the situation not getting
4 better, he finally just wanted out of the hospital -- that
5 hospital to return home." Right?

6 A. Those were my assumptions, yes.

7 Q. Well -- and we are also basing it on what Patrick Paige
8 told you?

9 A. I suppose. Yeah, somewhat.

10 Q. And then the last paragraph, you really -- we you don't
11 need to go through all the graphic stuff. The jury has a right
12 to read it, but I don't need to go through all that. But there
13 was some signs of -- I'm not trying to put you on as a
14 psychological expert, but things that would be consistent with
15 depression, which is what you say at the beginning of the
16 email, like not returning calls and that kind of thing, right?

17 A. I suppose so.

18 Q. Sir, do you know if this is the reason why his income had
19 dropped so much in those last couple of years?

20 A. I don't know.

21 Q. Okay. Well, do you know if he had a lot of difficulty
22 actually doing his work?

23 A. I know he always kept his computer with him at the
24 hospital. So I would imagine that he still was able to do
25 certain things, but exactly how much, I don't know.

1 MR. RIVERO: Judge, just one moment on this subject
2 here.

3 THE COURT: All right.

4 (Pause in proceedings.)

5 BY MR. RIVERO:

6 Q. All right. I had some technical difficulties, Mr. Kleiman.
7 I'll trying to take you through some emails, but I hope that we
8 have sorted that out.

9 So, Mr. Kleiman, just to reset this, do you recall that I
10 had shown you the March 8th, 2008 email -- sorry -- March 12,
11 2008 email, this one? Do you remember that?

12 A. Yes.

13 Q. Okay. And you raised some issue about whether it had
14 metadata or not?

15 A. Right.

16 Q. You know you're calling an expert witness here to talk
17 about whether documents are authentic or not, do you not?

18 A. I don't know exactly which documents they're going to be
19 talking about, no.

20 Q. Do you know that the only documents your expert's going to
21 be talking about are documents that your lawyers have told him
22 to look at?

23 A. Okay.

24 Q. Do you know that or not?

25 A. No. I don't know that.

1 Q. Okay. And do you know that your expert is not going to
2 talk about the March 12, 2008 email based on his report? Do
3 you know that?

4 A. I didn't know that. No.

5 Q. Okay. And -- sir, but you're saying -- or what are you
6 saying about the March 12th, 2008 email? Are you saying it's
7 real or are you saying it's phony?

8 A. I'm saying I don't know.

9 Q. Okay. And you're raising some doubt because of the
10 metadata?

11 MR. BRENNER: Objection. Asked and answered and
12 argumentative.

13 THE WITNESS: I'm just saying that --

14 THE COURT: The objection is overruled.

15 THE WITNESS: The copy that I received didn't contain
16 metadata. That's all I'm saying.

17 BY MR. RIVERO:

18 Q. And would you expect that your expert, if he's talking
19 about authenticity of documents, would sort that out for us?

20 A. I don't know what the expert will do.

21 Q. All right. Now, then I showed you -- I believe I showed
22 you a document that was about -- was about a long article that
23 was attached. You remember it was 95 pages long, and we -- and
24 it was one where -- I don't want to go back through everything,
25 but I just want to reset -- where David said: "Sometimes you

1 amaze me."

2 You remember that?

3 A. (No verbal response.)

4 Q. Okay. So let's go from there.

5 That's the day after the email --

6 MR. RIVERO: Let's put up, just so everybody's really
7 clear -- that's the day after the March 12 -- and let's just
8 show that one, which is Number 59.

9 I'm sorry. It's not Number 59. It's Plaintiffs' 2.
10 It's already in evidence. Just show it, Mr. Shah, so everybody
11 remembers.

12 Just blow up that first part of it and highlight
13 the --

14 BY MR. RIVERO:

15 Q. This is the one about: "I need your help editing a paper."
16 Right? And this is the one about: "You're always there for
17 me, Dave." Right? And this is the one about: "I need a
18 version of me to make this work that is better than me."

19 You see all that, right?

20 A. Yes, I do.

21 Q. Okay. The next one that we saw was no reference to
22 Bitcoin, correct?

23 A. Right.

24 Q. Okay.

25 MR. RIVERO: Now, what I'd like to do is have you look

1 at Defendant's 244.

2 BY MR. RIVERO:

3 Q. Do you see that, sir?

4 A. Yes. I see it.

5 Q. Okay. And --

6 THE COURT: Sorry. That says -- is that Joint 98?

7 MR. RIVERO: Thank you, Judge. It is marked Joint 98.

8 And so --

9 THE COURT: Is that what you want to be shown?

10 MR. RIVERO: Yeah. Thanks, Judge. And that one,
11 Judge, I would then move the admission of Joint 98.

12 THE COURT: All right. Admitted into evidence.

13 (Joint Exhibit 98 received into evidence.)

14 BY MR. RIVERO:

15 Q. All right. Sir, this is the next day after an invitation
16 to work on Bitcoin, right?

17 A. Can you repeat that.

18 Q. This email's the next day after an invitation to work on
19 the Bitcoin project?

20 A. Yes.

21 Q. Okay. Review it --

22 MR. RIVERO: Well, let's go to the bottom, Mr. Shah.

23 BY MR. RIVERO:

24 Q. Okay. Is that the first email, sir?

25 A. Yeah.

1 Q. Okay. So there's an email there from -- first from Lynn
2 Wright?

3 MR. RIVERO: If you can show the To/From.

4 BY MR. RIVERO:

5 Q. It's from Lynn Wright to your brother saying: "Hi, Dave.
6 I'm Lynn, Craig's wife. Your offer to take us to dinner is
7 lovely, but be warned, Craig loves to eat food. Ha, ha, ha."
8 And then: "Looking forward to meeting you in person," right?

9 A. Yes.

10 MR. BRENNER: Your Honor, at this point, I object. He
11 hasn't established this witness knows anything about this
12 document or has ever seen it before.

13 THE COURT: It's in evidence. What is the objection?

14 MR. BRENNER: The objection is not to the exhibit.
15 The foundation of asking a witness about a document he's never
16 seen or is not a part of.

17 THE COURT: It's in evidence. The objection is
18 overruled.

19 BY MR. RIVERO:

20 Q. Sir, then your brother responds: "Hello, Lynn. Pleasure
21 to meet you" -- niceties, right?

22 A. Yes.

23 MR. RIVERO: Next email.

24 BY MR. RIVERO:

25 Q. And then Craig Wright says: "Hi, Dave. How you doing this

1 Sunday," correct?

2 A. Yes.

3 Q. Just niceties, right?

4 A. Yes.

5 Q. Okay. And then they're excited: "Wow. You're going to be
6 here this weekend already. Okay. Where are you coming and
7 staying so I can figure this out?" Right?

8 A. Yes.

9 Q. Okay. And is that the end of it, Mr. Kleiman? And then
10 details about: "I arrive on Saturday," and the like. Correct?

11 A. Yes.

12 MR. RIVERO: Now, what I would like to do, then, is go
13 from there to Defendant's 243.

14 BY MR. RIVERO:

15 Q. Okay. Sir, this is from Craig Wright to -- the David
16 Kleiman email; isn't that right?

17 A. Yes.

18 MR. RIVERO: Joint Exhibit Number 97, Your Honor. I
19 seek its admission.

20 THE COURT: All right. So it's Joint 97?

21 MR. RIVERO: Yes.

22 MR. BRENNER: Your Honor, we don't object to the
23 admission of the exhibit, just for the use with this witness.
24 We object to the admission at this time.

25 MR. RIVERO: If I may, Judge?

1 THE COURT: It's my understanding the parties filed
2 joint exhibits because there was no objection to them.

3 MR. BRENNER: To their --

4 THE COURT: Is that correct, Mr. Brenner?

5 MR. BRENNER: Yes. To their use at trial, but not --
6 you still have to be a witness that knows something about it.

7 THE COURT: So isn't the purpose of the joint exhibits
8 is that we don't need to lay the proper foundation?

9 MR. BRENNER: I'm not objecting to the foundation.
10 I'm objecting to asking a witness about something he knows
11 nothing about it.

12 I don't object to the document. I don't object to it
13 being used with other witnesses or even moved into evidence.
14 But to ask a witness about a document he's never seen or knows
15 nothing about, that's the only objection.

16 THE COURT: So you're not objecting to it being in
17 evidence?

18 MR. BRENNER: Correct.

19 THE COURT: All right. Then let's continue.

20 MR. RIVERO: Yes. Thank you, Your Honor.

21 (Joint Exhibit 97 received into evidence.)

22 BY MR. RIVERO:

23 Q. So what happens is on the 25th of March Mr. Wright says to
24 Dave Kleiman: "Runners-up." Do you know that expression?

25 A. No. I don't.

1 Q. Okay. He says: "Hi, Dave. It looks like a while longer
2 before I get to meet you in person. I came runners-up and,
3 thus, shall not be over there again soon. Regards, Craig."

4 Do you see that?

5 A. Yeah, I see it.

6 Q. You don't know if "runners-up" is some Australian
7 expression for "I ran into problems," or something like that?

8 A. Yeah. I don't know.

9 Q. Okay. Sir, I'm going to skip forward. These are -- you
10 see that these are all emails, one after another, between Mr.
11 Wright -- Dr. Wright and Mr. Kleiman, right?

12 A. Yes. I see them.

13 Q. You see now that we're now 10 days later and there's no
14 email discussing this project that's going to be finished by
15 Halloween so far, correct?

16 A. Yes.

17 Q. Okay.

18 MR. RIVERO: I'm going to fast-forward, sir, and, in
19 fact, there's a demonstrative that I think -- Mr. Shah, I
20 suppose we should show the demonstrative.

21 Judge, this is a demonstrative that has previously
22 been shown to the Plaintiffs. I'm going to not publish it to
23 the jury yet, but I'm going to put it up so that they have an
24 opportunity to see what I'm referring to. It was produced
25 according to the Court's deadline for demonstratives on

1 October 1st, Your Honor.

2 Mr. Shah, you have to show them something about it.

3 Yeah. Okay.

4 Sir, would you just go to the next entry.

5 Okay.

6 So, Your Honor, I would seek leave at this time to use
7 this demonstrative.

8 MR. BRENNER: No objection to the use of the
9 demonstrative.

10 THE COURT: All right. Then you may continue.

11 MR. RIVERO: Okay.

12 BY MR. RIVERO:

13 Q. So I'm just going to -- Mr. Kleiman, I don't want to
14 misstate anything about this. I'm not going to go through
15 every single email, but we could. But let's just jump forward.

16 The first one was March 12th, 2008. Let's jump forward and
17 see what these gentlemen are talking about on April 9th, 2008.
18 I'll show it to you first --

19 MR. RIVERO: Actually, just go ahead and show it,
20 Mr. Shah.

21 BY MR. RIVERO:

22 Q. This is David Kleiman writing to Craig Wright, but now it's
23 still on the Re line "runners up." We had seen that email from
24 Craig to Dave, but Dave says, on April 9: "I have been laid up
25 for a bit. I have not worked in about 10 days."

1 Do you see that?

2 A. Yes.

3 Q. All right. If you know, Mr. Kleiman, is it the case that
4 David Kleiman would have -- would repeat over and over that he
5 would be able to work for periods of time?

6 A. I don't -- I don't have any knowledge of that.

7 Q. Okay. Okay.

8 A. Any personal knowledge.

9 Q. You have no testimony to give to this jury?

10 A. He never communicated to me like when he could or couldn't
11 work.

12 Q. Okay.

13 MR. RIVERO: Mr. Shah, if you could go to the next
14 date.

15 BY MR. RIVERO:

16 Q. That's 20 days later, but he's been down apparently 10 of
17 the 20 days from that email. So my next one -- I'm going to
18 show you April 22nd, 2008.

19 MR. RIVERO: And let's show this to the jury, I mean.

20 BY MR. RIVERO:

21 Q. So now it's Dave Kleiman writing to Craig Wright, says --
22 he says to Craig Wright on April 22nd: "Do you have any
23 interest in writing this? It would be writing for ISC2 and
24 their official guide. I've not been doing too well lately. I
25 am not going to be able to fulfill the requirements."

1 Do you see that?

2 A. Yes.

3 Q. No reference to Bitcoin, right?

4 A. No.

5 Q. Okay.

6 MR. RIVERO: Let's just go forward to the next one,
7 Mr. Shah.

8 BY MR. RIVERO:

9 Q. This is the --

10 MR. RIVERO: Go ahead and open that one.

11 BY MR. RIVERO:

12 Q. Same day. Kleiman writing to Mark Haumbaugh: "Mark, I do
13 apologize. I've had some physical problems arise and been
14 sporadically checking my email. Sadly, I do not think I will
15 be able to participate in the project."

16 Mr. Kleiman, do you have any knowledge?

17 A. No, I don't.

18 MR. RIVERO: Okay. The next email, sir.

19 Okay. April 24, could you open that one, Mr. --

20 BY MR. RIVERO:

21 Q. This is Dave Kleiman writing to Craig Wright on another
22 note: "Hi, Craig. I am really tired, been lying in bed all
23 day." Right?

24 A. Yes.

25 Q. And sir, you can't tell the jury that your brother would be

1 just periodically but consistently laying in bed not being able
2 to function?

3 A. With knowledge after the fact. But at the time, I didn't
4 have any personal knowledge of what he could or couldn't do.

5 Q. Fair enough, sir.

6 We're 30 days out now. No reference to Bitcoin, right?

7 A. Correct.

8 MR. RIVERO: Okay. Let's go to the next email.

9 BY MR. RIVERO:

10 Q. We're now 120 days out --

11 MR. RIVERO: Let's open this email.

12 BY MR. RIVERO:

13 Q. That's four months. Here's Dave Kleiman writing to Craig
14 Wright four months later, four months later, and he says:
15 "Speaking of plagiarizing, maybe we could write a paper
16 together. It seems I was asked to write a paper for an
17 academic institution. I think it would be fun to write
18 something together."

19 Do you see that, sir?

20 A. Yes.

21 Q. Now, sir, isn't it true, since you have had access to
22 Mr. Kleiman's papers, that you never saw anything from March
23 12, 2008 until June 3rd, 2008 where Mr. Wright -- Dr. Wright
24 and Mr. Kleiman talk about Bitcoin at all after -- for the next
25 four months, after the March 12 email? Isn't that right?

1 A. I've never had access to my brother's early emails. So I
2 wouldn't know.

3 Q. Okay. Let's go to the next date, understanding, again,
4 we'll seek to fill in the record, but I just want to go through
5 the key dates.

6 June 5th, this is two days later --

7 MR. RIVERO: If you would open up, Mr. Shah --

8 BY MR. RIVERO:

9 Q. Two days later, Craig Wright writes your brother, but --
10 copies your brother, but not about Bitcoin. He says: "Hi,
11 Dave, Shyaam" -- who is copied on the email -- "is going to be
12 helping in the writing of the paper on the drive wipe fallacy.
13 The paper submission date is July 19th, 2008. Dave, are you
14 interested?"

15 Do you see that, sir?

16 A. Yes. I see it.

17 Q. You know they wrote that paper together?

18 A. I don't know.

19 Q. I thought you said that you did know.

20 A. About which paper?

21 Q. The drive wipe fallacy, you know, overwriting a hard drive?

22 A. Oh, yes. I remember at my deposition your attorney
23 mentioning it, yes.

24 Q. Okay. So sir, you see that on June 5th, this is the --
25 this is -- they're talking about -- now March 12, there was no

1 mention of Bitcoin. Then your brother mentions some writing
2 that he wants Craig Wright to do. And now Craig Wright says:
3 "Hey, how about we work on this paper."

4 Do you see that?

5 A. Yes.

6 Q. Okay. Sir, let me go to the next email.

7 THE COURT: Mr. Rivero, let us know when it might be a
8 good time to take a break.

9 MR. RIVERO: Oh, Judge. I think this is a fine time
10 to take a break.

11 THE COURT: All right.

12 Ladies and Gentlemen, let's take a 20-minute recess.
13 See you in 20 minutes.

14 (Recess from 3:32 p.m. to 3:48 p.m.)

15 THE COURT: All right. Welcome back.

16 All right. Both sides ready to continue?

17 MR. RIVERO: Yes, Your Honor.

18 MR. BRENNER: Yes, Your Honor.

19 (Before the Jury, 3:48 p.m.)

20 THE COURT: All right. Welcome back, Ladies and
21 Gentlemen. Please be seated.

22 Let me apologize. I know it was a little warm. We've
23 contacted GSA and we are fixing it as we speak.

24 All right. Continuing with the cross-examination.

25 MR. RIVERO: Yes, Your Honor.

1 Mr. Shah, if you can put us back to where we were.

2 BY MR. RIVERO:

3 Q. Sir, now, after the June 5 email --

4 MR. RIVERO: Let's show the next one, Mr. Shah. Let's
5 show --

6 BY MR. RIVERO:

7 Q. We just saw that Craig writes -- 120 days out writes and
8 says: "Hey, how about doing a paper together, The Data Wipe
9 Fallacy."

10 Then on June 17, what happens? Okay. So this is --
11 Mr. Kleiman, this is 12 days after they start talking about The
12 Data Wipe Fallacy, correct?

13 A. Yes.

14 Q. And Dave Kleiman writes to Craig Wright and Shyaam and
15 says: "Hey, I'm unavailable over the next 10 days. And it
16 looks, sir, does it not, like a whole bunch of work from June
17 18 to June 27."

18 Do you see that?

19 A. Yes. I see it.

20 Q. Did your brother -- did he work a lot out of town when he
21 was working?

22 A. I believe sometimes.

23 Q. Okay. Does it look like that for this time period?

24 A. Yes.

25 Q. Okay.

1 MR. RIVERO: Let's go to the next one, Mr. Shah, the
2 June 23rd.

3 BY MR. RIVERO:

4 Q. June 23rd. Let's see. Let's just do a little math.

5 That's -- now we're a number of months out from March 12th, and
6 Craig Wright responds to David Kleiman saying: "So what type
7 of topic do you want to work on?"

8 Do you see that, Mr. Kleiman?

9 A. Yes. I see it.

10 Q. All right. No reference to Bitcoin, correct?

11 A. Not here, no.

12 Q. Does it appear like they're trying to -- he's trying to
13 prompt some topic that they ought to work on?

14 A. Yes.

15 MR. RIVERO: Next email. July 16 -- I'm sorry.
16 Mr. Shah, go back to the front piece before you show this
17 particular July 16. I think we can see -- yeah.

18 BY MR. RIVERO:

19 Q. Do you recall -- as we look at this, directing your
20 attention and the jury's attention to the June 5 entry that the
21 paper submission date between Shyaam, Craig, and David Kleiman
22 was July 19. Do you see that?

23 A. Yes.

24 Q. Okay.

25 MR. RIVERO: So now we're going to look at an email

1 from July 16. If you would open that.

2 BY MR. RIVERO:

3 Q. "And what is our absolute cut-off date?" I'm sorry. He
4 says: "Not too much. What is our absolute cut-off date,
5 giving you enough time to review it and finalize the document?"

6 And Craig Wright answers: "Hi" -- I'm sorry. It's the
7 other way around. He says: "Hi. Just wanted to see if you
8 have made any headway."

9 And then David Kleiman answers -- sorry. I got that
10 backwards because it doesn't make sense: "Not too much. What
11 is our absolute cut-off date, giving you enough time to review
12 and finalize the document?"

13 Do you see that?

14 A. Yes, I do.

15 Q. And so do you understand this is The Data Wipe Fallacy?

16 A. Okay.

17 Q. All right. Not Bitcoin?

18 A. It doesn't appear to be, no.

19 Q. All right.

20 MR. RIVERO: Let's see the next one, Mr. Shah.

21 BY MR. RIVERO:

22 Q. Okay. Actually, I think I need to show you some
23 intervening emails. Well, let's just -- I'll show you some
24 intervening emails.

25 MR. RIVERO: Let's show September 9.

1 BY MR. RIVERO:

2 Q. Do you see that David Kleiman writes to Craig Wright on
3 September 9: "Craig, I should be able to help you with the
4 paper and anything else I can do from home, as that will be my
5 location for quite some time. I will be strictly working from
6 home for the next 45 days. Not doing that well"?

7 Do you see that?

8 A. Yes, I do.

9 Q. Again, you don't have personal knowledge about his health
10 state at this time?

11 A. No.

12 Q. Do you know if, in September of '08, he was going to be
13 housebound for a long period of time?

14 A. I don't recall.

15 Q. Did you live in proximity to -- did you live in proximity
16 to Mr. -- to David Kleiman?

17 A. Yes. Fairly close.

18 Q. But you don't know if he was housebound?

19 A. No.

20 Q. All right.

21 MR. RIVERO: Let's show the next one, September 10th.

22 BY MR. RIVERO:

23 Q. Now, here's David Kleiman to Craig Wright on September 10,
24 and he says: "I will not be doing much of anything for a bit
25 unless it can be done from home. I will try to call you when

1 I'm driving to the VA in an hour."

2 You see that?

3 A. Yes, I do.

4 Q. All right.

5 MR. RIVERO: And, Mr. Shah, do we have anything more
6 on this through October 30th?

7 All right. September 24th, open that one, if we
8 would.

9 BY MR. RIVERO:

10 Q. By the way, no reference to Bitcoin in those emails either,
11 correct?

12 A. Correct.

13 Q. "To whom it may concern, VA record. My patient, David
14 Kleiman, is under treatment for a serious medical problem. I
15 was considering hospitalizing him immediately, but he has
16 assured me that he will go home and rest in bed and monitor his
17 condition. If it does not improve, he is to call 911 and go to
18 the nearest hospital."

19 MR. RIVERO: Okay. Let's go to the next one.

20 BY MR. RIVERO:

21 Q. Okay. Sir, we are now two weeks out from Halloween day,
22 2008 and the release of the world-shaking white coin bit paper
23 [sic].

24 MR. RIVERO: Let's open October 13.

25 BY MR. RIVERO:

1 Q. Do you see any reference to Bitcoin here?

2 A. No, I don't.

3 Q. David Kleiman writes to a bunch of folks saying: "All" --
4 including Craig Wright -- "I apologize for being a hold-up on
5 my portion of this, referring to domains. No excuse. However,
6 I forgot my accountant filed an extension for my taxes on this
7 year and October 15 is the cut-off. I've been working on that
8 nonstop until the wee hours of the morning for the past few
9 days. I will not be working tomorrow, Tuesday," and the rest
10 is there for you to see.

11 No reference to hard work on the whitepaper, is there?

12 A. No.

13 Q. All right.

14 MR. RIVERO: Let's see the next email.

15 BY MR. RIVERO:

16 Q. And sir, you know that the date is October 31 --

17 MR. RIVERO: We can skip that, Mr. Shah.

18 Is there anything, Mr. Shah --

19 BY MR. RIVERO:

20 Q. All right. You know that's the date of the release of the
21 Whitepaper?

22 A. Yes. That's what I understand.

23 Q. All right. Now, sir, isn't it the case -- again, you stand
24 in the shoes of David Kleiman? Correct?

25 A. Yes.

1 Q. You're his personal representative?

2 A. Right.

3 Q. Isn't it the case that -- and I'm going to show you some of
4 these emails, but if we went through every single email between
5 March 12th, 2008 and October 31, 2008, the release of the
6 whitepaper, we would not find one single reference to the
7 Bitcoin Whitepaper. Isn't that right?

8 A. I -- I wouldn't know because I never had access to his
9 email system.

10 Q. Well, given that, sir, I do want to show you a couple of
11 other emails as the personal representative here in court.

12 Sir, I want to show you --

13 MR. RIVERO: Let me -- I'm going to have to consult.

14 Either D358 or D359 to the extent we have not already
15 shown them in the demonstrative.

16 (Pause in proceedings.)

17 MR. RIVERO: Yep. Show 358, if you would, just to the
18 witness.

19 THE COURT: All right. D358 was withdrawn. So what
20 is the joint exhibit number?

21 MR. RIVERO: I see, Judge. Can you -- yeah, but --
22 excuse me, Your Honor.

23 (Pause in proceedings.)

24 MR. RIVERO: We're looking for the number, Your Honor.

25 THE COURT: All right.

1 (Pause in proceedings.)

2 MR. RIVERO: Judge, thank you. I understand now it
3 was shifted over from Defendant's to joint exhibit, is what
4 happened.

5 THE COURT: Every exhibit has to have an
6 identification.

7 MR. RIVERO: I know. I know.

8 (Pause in proceedings.)

9 MR. RIVERO: Your Honor, in the meantime, I'm going to
10 show a hard copy to Mr. Brenner of -- it's two documents, 357
11 and 358.

12 THE COURT: All right. So D357 is on your --

13 MR. RIVERO: Oh, it is on our list.

14 THE COURT: D357. Which one is D358?

15 MR. RIVERO: Yeah, I'm waiting for that from my team,
16 Judge.

17 (Pause in proceedings.)

18 MR. RIVERO: Judge, in the meantime, I'll show 357 to
19 the witness --

20 THE COURT: All right.

21 MR. RIVERO: -- and to counsel who have already seen
22 it.

23 Mr. Shah, could you blow it up, showing the bottom one
24 first.

1 BY MR. RIVERO:

2 Q. And sir, my question to you is here --

3 MR. RIVERO: If you could show the To/From, Mr. Shah.

4 BY MR. RIVERO:

5 Q. Now, Mr. Ira Kleiman, this is from Craig Wright to Dave
6 Kleiman, correct?

7 A. Yes.

8 MR. RIVERO: And then if we look at the one above
9 it -- it's on 357.

10 BY MR. RIVERO:

11 Q. This is from Dave Kleiman, dave@davekleiman.com, directed
12 to Craig Wright, correct?

13 A. Yes.

14 MR. RIVERO: Your Honor, I would move the admission of
15 357.

16 THE COURT: Is there any objection?

17 MR. BRENNER: Object on 602 grounds with this witness.

18 MR. RIVERO: 602 --

19 MR. BRENNER: Lack of personal knowledge for the
20 witness.

21 MR. RIVERO: Your Honor, this is the personal
22 representative of David Kleiman.

23 THE COURT: Is that the basis, lack of personal
24 knowledge?

25 MR. BRENNER: For this witness, yes.

1 THE COURT: All right. The objection is overruled.

2 MR. RIVERO: All right.

3 THE COURT: Be admitted into evidence.

4 (Defendant's Exhibit 357 received into evidence.)

5 MR. RIVERO: So I -- this fits into the demonstrative.
6 I don't want to waste the jury's time going back and forth, but
7 if you forget, let me know and I'll bring you back to the
8 demonstrative.

9 BY MR. RIVERO:

10 Q. Do you remember that the way the emails were running in
11 early June, Craig Wright proposed to Dave and Shyaam to work on
12 the data wipe fallacy and he advised of a deadline in the
13 middle of July? Do you recall that?

14 A. Yes.

15 Q. And then we saw an email where Craig Wright said: "Have
16 you made any headway?" Right?

17 A. Right.

18 Q. And that's the bottom one here, correct?

19 A. Yes.

20 Q. Then this response -- we also saw this response, which is
21 not too much or maybe we didn't -- "Attached is what I started
22 on so far. Tracked changes are on. I can definitely get more
23 done tomorrow evening and much more Friday night and through
24 the weekend. What is our absolute cut-off date, giving you
25 enough time to review and finalize the document? Dave."

1 I apologize if I may be repeating.

2 Do you see that?

3 A. Yes.

4 Q. And let's see what Dr. Wright said. So he says to your
5 brother -- he puts a -- that's a -- an HTTP -- is that a
6 website address?

7 A. I don't see where you're looking.

8 Q. Oh, yeah. Right under the subject line.

9 A. Yes. That's --

10 Q. That's a website address?

11 A. Yes.

12 Q. Okay.

13 MR. RIVERO: But then here's where the text starts,
14 Mr. Shah.

15 BY MR. RIVERO:

16 Q. "We are in a little luck." And then he quotes something.
17 It looks like it's talking about: "You will be permitted to
18 update the PDF version."

19 MR. RIVERO: Mr. Shah, that's the last sentence of the
20 quoted material.

21 BY MR. RIVERO:

22 Q. "You will be permitted to update the PDF version of your
23 paper until July 21."

24 See that?

25 A. Yes, I see it.

1 Q. Looks like they caught a break and they get a couple more
2 days, right?

3 A. Yeah.

4 Q. And he says: "So as late as Sunday night. As long as we
5 get a draft up on the 19th, we can update it until the 21st.
6 If you can get me something on Sunday, I can get it done for
7 Monday." Right?

8 A. Yes.

9 Q. Does this sound like two people working together on a
10 paper?

11 A. Yes.

12 Q. Okay. And normal that they would check on deadlines and
13 "what's your progress," right?

14 A. Right.

15 Q. But this isn't about Bitcoin?

16 A. It doesn't appear to be.

17 Q. Okay. Now, let me show you --

18 MR. RIVERO: If we have D359. If that has a joint
19 exhibit, I ask for it.

20 And let Defense counsel -- pardon me -- Plaintiffs'
21 counsel take a look, Mr. Kleiman, while you review it.

22 Can you make it bigger?

23 MR. BRENNER: I'm sorry, Your Honor. Was there a
24 joint exhibit number? It's not a joint.

25 MR. RIVERO: It's not a joint. I was just inquiring

1 if it was. It's not a joint.

2 THE COURT: So this is D359.

3 MR. RIVERO: Yes. Your Honor, I would move the --
4 well, let me -- I'm sorry.

5 BY MR. RIVERO:

6 Q. Sir, is this an email from Craig Wright to David Kleiman at
7 dave@davekleiman.com?

8 A. Yes, it is.

9 Q. All right.

10 MR. RIVERO: Move the admission of 359.

11 MR. BRENNER: No objection, Your Honor.

12 THE COURT: Admitted into evidence.

13 (Defendant's Exhibit 359 received into evidence.)

14 BY MR. RIVERO:

15 Q. Sir, this is Dr. Wright writing to both Dave and Shyaam,
16 that's the team on The Drive Wipe Fallacy paper, saying,
17 essentially -- would you agree with me he's essentially saying:
18 "Mission accomplished"?

19 A. Yes.

20 Q. Actually, I'm wrong. That's -- I'm sorry. I take that
21 back. He says: "This is what I've uploaded. Have a read and
22 please make sure there are no glaring errors. Our last chance
23 to change it ends tomorrow. Regards, Craig." Right?

24 A. Yes.

25 Q. Again, does this look like a normal team, you know,

1 crossing the Ts, dotting the Is, right before the finish line?

2 A. I guess so.

3 Q. Okay. Now, I do want to show you --

4 MR. RIVERO: I do want to skip forward to 360.

5 If you would show -- pardon me one second. Before you
6 show that, Mr. Shah, let me just take a quick look.

7 Oh, yeah. 360, if you would put that up for the
8 witness and for counsel and make this bigger so counsel can see
9 it and then scroll down. Thank you, Mr. Shah.

10 Counsel, have a chance --

11 MR. BRENNER: Give me one second, please.

12 (Pause in proceedings.)

13 MR. BRENNER: Just one page?

14 MR. RIVERO: Yes.

15 MR. BRENNER: I reviewed it, Your Honor.

16 MR. RIVERO: Let's go to the top.

17 BY MR. RIVERO:

18 Q. Mr. Kleiman, this is your brother at the top writing to
19 Craig Wright and Shyaam, right?

20 A. Yes.

21 Q. And then it's responding to an email from Craig Wright.

22 MR. RIVERO: Judge, I move its admission -- I'm sorry.
23 I move its admission.

24 MR. BRENNER: No objection, Your Honor.

25 THE COURT: All right. 360 in evidence.

(Defendant's Exhibit 360 received into evidence.)

MR. RIVERO: Okay. Let's publish this to the jury.

THE COURT: You may.

BY MR. RIVERO:

Q. Okay. Sir, this is September 9, 2008, right?

A. Yes.

Q. It's in the critical time period. We're about 50 days out from the Satoshi Nakamoto Bitcoin Whitepaper, right?

A. Yes.

Q. And they're talking about: "Our paper."

Do you see that?

A. Yes.

Q. And it says -- Craig Wright says to Dave Kleiman and Shyaam: "Our paper. Hi. We have conditional approval. Congratulations and thanks for the effort. We have a few updates and changes, but there's nothing major. Thanks, Craig." Right?

A. Yes.

Q. And then your brother says: "Let me know what you need me to do and it will be done," exclamation, "Dave." Right?

A. Yes.

Q. Does that look to you like a team that is enjoying their success with the hard work they have done now with a paper?

A. I suppose so.

Q. All right.

1 MR. RIVERO: Just a moment, Judge.

2 (Pause in proceedings.)

3 BY MR. RIVERO:

4 Q. I want to talk to you, Mr. Kleiman, about Dave's devices --
5 David Kleiman's devices.

6 Actually, before we do that, though, sir, don't you -- you
7 agree with me that you are not -- you are not a risk-taker in
8 terms of -- in terms of investments, right?

9 MR. BRENNER: Objection. Relevance.

10 MR. RIVERO: Judge, this is relevant.

11 THE COURT: Overruled at this point.

12 BY MR. RIVERO:

13 Q. You are not a risk-taker as to investments; isn't that
14 right?

15 A. I don't know if that's exactly accurate.

16 Q. You agree with me -- will you agree with me that you need
17 to know -- you need to not put all your eggs in one basket in
18 investments, right?

19 A. Yeah. I may have said that, yes.

20 Q. And you have to know when to take your profits, right?

21 A. Right.

22 Q. And when Craig Wright was discussing with you a
23 Coin-Exch. -- the Coin-Exch. company -- let me make sure that
24 we understand that -- you went -- you referred to negotiations
25 you had with Craig Wright. Do you remember that?

1 A. Yes.

2 Q. Yesterday?

3 A. Yes.

4 Q. You and Craig Wright negotiated about a company named
5 Coin-Exch.; isn't that right?

6 A. Correct.

7 Q. And what Mr. Wright told you was that Dave was entitled to
8 a certain number of shares in this Coin-Exch. company because
9 Dave -- he had always meant for Dave to be participating in
10 this Coin-Exch. company. Didn't he say that?

11 A. That's right.

12 Q. And I believe you and your father were to receive
13 10 million shares; is that right -- 10 million shares in
14 Coin-Exch., if I'm not mistaken?

15 A. Yes.

16 Q. All right. And, in fact, he transferred the shares to you
17 by putting it into the registry of the company, Coin-Exch.;
18 isn't that true?

19 A. I believe I received some kind of certificate, but I don't
20 understand the details of it.

21 Q. Okay. And when we saw a document about -- some kind of tax
22 document about your receipt of shares being valued or about
23 whether you had paid for it, you had received that in exchange
24 for what it is that Dr. Wright was saying that he believed that
25 David Kleiman was entitled to, right?

1 A. I think so. Yes.

2 Q. And so what you received was an exchange for a claim of
3 rights?

4 A. For?

5 Q. For entitlement.

6 A. Yes.

7 Q. Okay. And so that, in that sense, you had a right and he
8 was providing you shares, right?

9 A. Yes.

10 Q. And there was -- do you understand that there was an
11 attributed value to do that?

12 A. Not completely, no. I don't.

13 Q. Okay. All right.

14 Now, not only did you feel that -- not only do you feel
15 that you need to know when to take a profit --

16 MR. RIVERO: Actually, let me go ahead and show you
17 Plaintiffs' 157.

18 Mr. Shah, if you would put it up for the witness and
19 for counsel and make sure that they can see it. It's their
20 exhibit.

21 Judge, I'm going to move -- if it's not already in,
22 I'm moving the admission of Plaintiffs' 157.

23 MR. BRENNER: Can you just scroll -- I have no
24 objection, Your Honor.

25 THE COURT: Admitted into evidence.

1 (Plaintiffs' Exhibit 157 received into evidence.)

2 BY MR. RIVERO:

3 Q. Okay. Sir, this is an email from Craig Wright to you in
4 April of 2014, right?

5 A. Yes.

6 Q. And if you'll --

7 MR. RIVERO: Let's go to Page 4, Mr. Shah.

8 BY MR. RIVERO:

9 Q. So in this long email chain -- there's a lot of it on
10 here -- the jury has the ability to look at all of this when it
11 wants, but I want to direct your attention to Wednesday, April
12 23, at 1:47 -- 1:37. It's the second entry.

13 Yeah. You're in the middle of negotiating about Coin-Exch.
14 and you're going back and forth. And I guess there's something
15 that you're saying -- it's not the -- the first line is sort
16 of: "I'm not doubting you, Craig, but that doesn't mean
17 something shouldn't be taken off the table. Just like trading
18 stocks, you have to know when to take a profit and let the rest
19 ride. No need for all eggs in one basket." Right?

20 A. Yes.

21 Q. So as of 2014, had there been an ability to obtain a
22 return, you definitely wouldn't have held everything -- you
23 wouldn't have held everything, correct?

24 A. Yeah. I think I mentioned to him that I would like to
25 extract a portion of the value, if possible.

1 Q. You would have sold some, at least?

2 A. Yes. That's what I brought up with him, yes.

3 Q. All right. And then you also said -- and here I'd like
4 to -- you also said that Dave himself -- if he had been there,
5 Dave would have wanted to assure that he wouldn't be -- no.

6 You were telling Craig -- you were assuring Craig that Dave
7 wouldn't want to be riding everything into a new venture
8 without enjoying at least some of it, right?

9 A. Yeah. I mean, that was my assumption, I suppose.

10 Q. Well, we've talked about this before. Your view was that
11 Dave -- as we've seen in your papers, Dave would have cashed
12 out to -- to enjoy some of it. Same thing, right?

13 A. Yeah. That's what I'm assuming.

14 Q. All right. Now, I want to go through this Coin-Exch.
15 thing.

16 Craig offered you shares in Coin-Exch., but you tried to
17 return -- when he gave you the shares, you tried to give them
18 back because of taxes?

19 A. That was all worked out with Craig's attorney and my
20 attorney.

21 MR. RIVERO: Well, let me show you Defendant's 285.

22 Please show this to counsel.

23 And, Mr. Shah, it's 10 pages, so please scroll through
24 for counsel so they get a chance to look at it.

25 MR. BRENNER: Your Honor, I feel like this one may be

1 in already, to expedite things, if it is.

2 THE COURT: All right. 285 appears to be withdrawn.

3 Is that a joint exhibit? Because it's withdrawn on
4 the Plaintiffs' exhibit list.

5 Is there a --

6 MR. RIVERO: I'm waiting to have word.

7 MS. MCGOVERN: D285.

8 MR. RIVERO: Judge, I may have misspoken. I meant to
9 say Defendant's 285.

10 THE COURT: Oh, all right.

11 MR. RIVERO: I apologize. And I'm being told it's
12 admitted, Your Honor.

13 THE COURT: 285. It's in evidence.

14 MR. RIVERO: Thank you, Your Honor.

15 BY MR. RIVERO:

16 Q. So first, let's go to -- there was a part where you --
17 Plaintiffs' counsel actually showed it to you --

18 MR. RIVERO: In here, Mr. Shah, if you would move up
19 to where Dr. Wright is writing to Ira Kleiman and saying:
20 "Dave may have been cash poor, but he was not poor."

21 If you could move that up and place that. And it's
22 right here at the bottom, if you can blow up the second -- the
23 bottom of Page 2, the bottom email.

24 BY MR. RIVERO:

25 Q. You were shown this by your lawyer, right, the part about:

1 "Next thing for you to discover is that Dave may have been cash
2 poor, but he was not poor"?

3 A. Yes. I've seen that.

4 Q. Right. Now, the implication of the question was that that
5 was referring to Bitcoin?

6 MR. BRENNER: Objection. Argumentative.

7 BY MR. RIVERO:

8 Q. Do you remember?

9 THE COURT: Rephrase. The objection is sustained.

10 MR. RIVERO: Okay. All right.

11 BY MR. RIVERO:

12 Q. He was referring to shares in Coin-Exch., wasn't he?

13 A. I don't --

14 Q. Let me show you the next line: "I hold shares in trust for
15 him."

16 Do you see that?

17 A. Yes. Yes.

18 Q. He didn't say: "I hold Bitcoin in trust for him."

19 A. Right. Yes. I believe he's talking about Coin-Exch. here.

20 Q. "It is pre-IPO."

21 Do you see that?

22 A. Yes.

23 Q. Now, "IPO" means Initial Public Offering, right?

24 A. Correct.

25 Q. I think, it seems from your emails you dabble in

1 investments, right?

2 A. Yes.

3 Q. So an IPO is a moment where a company goes public so the
4 shares become available to the public, right?

5 A. Yes.

6 Q. Then he says: "But with a capital" -- "With a
7 capitalization of around 40" -- "It's pre-IPO, but with a
8 capitalization of around \$40 million." Right?

9 A. Yes.

10 Q. He owns 10 percent of it. Right?

11 A. Yes.

12 Q. IPO does not refer -- Bitcoin is not going on an IPO,
13 right?

14 A. Yeah. We're talking about Coin-Exch.

15 Q. Correct. Okay. We're talking about Coin-Exch., when he
16 says -- this line that you were shown by your lawyer about
17 "cash poor, but not poor," this is Dr. Wright talking about
18 Coin-Exch., isn't it?

19 A. Yes. I believe it is.

20 Q. And then he says: "And I'm not kidding." Right?

21 A. Right.

22 MR. RIVERO: Let's go to -- if we could show Joint
23 Exhibit 48.

24 BY MR. RIVERO:

25 Q. All right. So this --

1 MR. RIVERO: Judge, I move its admission as a joint
2 exhibit.

3 THE COURT: Admitted into evidence.

4 (Joint Exhibit 48 received into evidence.)

5 MR. RIVERO: If we can publish to the jury.

6 BY MR. RIVERO:

7 Q. This is Dr. Wright trying to get you to provide him the --
8 whatever documentation he needs to make the share transfer on
9 Coin-Exch., right?

10 A. Yes.

11 Q. And it says: "Just signed," stating the amount for you
12 versus your father, right?

13 A. Yes.

14 Q. At this time, your father, Louis, was still alive?

15 A. Yes.

16 Q. And so you were both beneficiaries under David Kleiman's
17 will, right?

18 A. No. Just myself.

19 Q. Okay. All right. I stand corrected.

20 But you had told him, I take it, that you wanted to make
21 sure your father got some of it?

22 A. Yeah. I asked him if my father could be included in the
23 split of shares.

24 Q. Okay. And then this is -- by the way, the attachment's
25 called "Company Share Allocation." Right?

1 A. Yes.

2 Q. And it says: "Hi, Craig" -- you say: "Hi, Craig. Is the
3 attached letter sufficient? Thanks." Right?

4 A. Yes.

5 Q. Okay.

6 MR. RIVERO: Now, if we can go to Defendant's 289.

7 BY MR. RIVERO:

8 Q. This is an email from Dr. Wright to you, correct?

9 A. Yes.

10 MR. RIVERO: And Judge, I would move the admission of
11 Defendant's 289.

12 MR. BRENNER: Can we just scroll to the second page.
13 And back to the first, please.

14 (Pause in proceedings.)

15 MR. BRENNER: I have no objection, Your Honor.

16 THE COURT: Admitted into evidence.

17 (Defendant's Exhibit 289 received into evidence.)

18 BY MR. RIVERO:

19 Q. And what happens is Dr. Wright gets your letter. And he
20 says -- he says: "As discussed, the 10,642,500 total founder
21 shares in Coin-Exch. PTY Limited that are held by myself
22 non-beneficially for Dave Kleiman's estate are to be
23 distributed as follows," and there's one number for you and one
24 number for your father.

25 A. Yes. Correct.

1 Q. And you have the right to be appointed as a director and
2 you're going through the technical process of doing this,
3 correct?

4 A. Yes.

5 Q. Okay.

6 MR. RIVERO: And then if we can show Mr. Kleiman Joint
7 Exhibit 49.

8 Your Honor, I move the admission of Joint Exhibit 49.

9 THE COURT: Admitted into evidence.

10 (Joint Exhibit 49 received into evidence.)

11 BY MR. RIVERO:

12 Q. And sir, then you sign the papers, but you haven't decided
13 at this point who the directors are going to be, right?

14 A. Yes.

15 Q. Okay.

16 MR. RIVERO: Let's go to Defendant's 323.

17 BY MR. RIVERO:

18 Q. Okay. Mr. Kleiman, this is just one page.

19 Do you see the minute book of Coin-Exch. -- Coin E-X-C-H,
20 P-T-Y, L-T-D?

21 A. Yes, I do.

22 Q. All right. And sir, have you seen this before?

23 A. I don't recall seeing it, no.

24 Q. Okay. Do you have a recollection that the minute book of
25 Coin-Exch. PTY was annotated to reflect the shares that you and

1 your father received?

2 A. I don't have any understanding of that.

3 Q. You didn't know that? Okay.

4 A. No.

5 Q. Okay.

6 MR. RIVERO: Let's move to the next one, Defense 45.

7 BY MR. RIVERO:

8 Q. Okay. Sir, this is produced by you, correct?

9 A. I'm not sure.

10 Q. Do you see the bottom -- see the little number that -- and
11 your name?

12 A. Okay.

13 Q. All right. And sir, you know this was registered with the
14 Australian Securities and Investment Commission?

15 A. I didn't know that.

16 Q. Okay. But your side produced this document.

17 A. Okay. I believe you.

18 MR. RIVERO: Your Honor, I'm going to move
19 Defendant's 45.

20 MR. BRENNER: Could we just see the second page,
21 please?

22 (Pause in proceedings.)

23 MR. BRENNER: No objection.

24 MR. RIVERO: We can publish.

25 THE COURT: All right. Admitted into evidence.

1 (Defendant's Exhibit 45 received into evidence.)

2 THE COURT: You may publish.

3 BY MR. RIVERO:

4 Q. All right. This is actually the Australian Securities and
5 Exchange Commission. And there was a form number, et cetera.
6 And it's Coin E-X-C-H, P-T-Y, Limited of Australia. And then
7 it's signed by Craig Wright.

8 MR. RIVERO: And can we see the second page, Mr. Shah?

9 BY MR. RIVERO:

10 Q. And what this does is it changes the register of members of
11 the company to reflect that Craig Wright's shares are reduced
12 by 10,500,000 and your shares are included -- increased by
13 10,500,000, right?

14 A. Okay.

15 Q. You see that?

16 A. Yes. I see it.

17 Q. Okay.

18 MR. RIVERO: Now, I'd like to show you Joint
19 Exhibit 31.

20 BY MR. RIVERO:

21 Q. All right, sir --

22 MR. RIVERO: Judge, I'd move the admission of Joint
23 Exhibit 31.

24 THE COURT: Admitted into evidence.

25 (Joint Exhibit 31 received into evidence.)

1 MR. RIVERO: And ask for publication to the jury.

2 THE COURT: You may.

3 BY MR. RIVERO:

4 Q. All right. Okay. Now you're talking to Craig Wright about
5 these shares and you talk -- this is --

6 MR. RIVERO: Would you please show the jury bigger the
7 email from Ira Kleiman to Craig Wright.

8 BY MR. RIVERO:

9 Q. And you're talking about how close you are with Joe Karp
10 and you can't speak highly enough about this guy. And then you
11 say -- in fact, you say here: "I'm not sure if Dave ever told
12 you his motorcycle story. Dave ran up" --

13 MR. RIVERO: Could you highlight this, Mr. Shah: "I'm
14 not sure if Dave ever told you his motorcycle story."

15 BY MR. RIVERO:

16 Q. Can you see it?

17 A. Yeah.

18 Q. "Dave ran up some crazy bills and was in debt for, I think,
19 \$20,000. Joe, along with my parents, helped erase them all.
20 He was debt-free and could start fresh, but what does Dave do?
21 He goes out and buys a motorcycle. A week later, he gets in
22 the accident that changes everything." Right?

23 A. Yes.

24 MR. RIVERO: And then on Page 2 of 7, Mr. Shah.

25

1 BY MR. RIVERO:

2 Q. Okay. Now, you say to Craig Wright on April 28th, 2014:

3 "I have been giving some thought about how to handle the shares
4 of Coin-Exch. If I choose to sell some this year, could I then
5 do the same the following years?"

6 That's what you say, right?

7 A. Yes.

8 Q. What you're thinking about is selling this off, you know,
9 selling some this year, next year, and the next year, selling
10 it off, right?

11 A. Correct.

12 Q. You are not planning to hold it for the long term?

13 A. No. I believe he gave me the options and I responded back.
14 I told him I would just like to sell a portion and then hold
15 the rest.

16 Q. Well, I mean, here it says: "If I choose to sell some of
17 this," you were going to do the same the following years?

18 A. Yeah, I just wanted to know what was capable.

19 Q. And you say -- and then if you go -- here, you're going to
20 say why you wanted to do this: "I'm considering this route for
21 a couple of reasons. Being that I still get calls each day
22 from Dave's debt collectors" -- and this is the story about all
23 this debt problem, right?

24 A. Yes.

25 Q. Okay. And that goes on -- I've already shown this to the

1 jury.

2 And then you say below: "I don't know where he spent that
3 money. So I was wondering if he helped fund the W&K
4 operation." Right?

5 A. Yes.

6 Q. Now, sir, if he helped fund the W&K operation, you would
7 definitely agree with me that he would have an interest in
8 reporting that to the IRS so he could show a loss in the
9 business that would offset future gains; isn't that right?

10 A. Yeah, that sounds right.

11 Q. Okay. But there was no tax return?

12 A. Not to my knowledge.

13 Q. Okay. So let me go back to the bottom here, all the way to
14 the bottom: "But I figured just in case, it might be good to
15 sell some shares now for safety. Another problem I'm thinking
16 about is if I do sell some shares, the debt collectors may come
17 after the proceeds. Do you know how I can minimize this risk
18 as well as the taxes?" Right?

19 A. Yes.

20 Q. That's what you're thinking about, right?

21 A. I believe -- well, I guess it goes into communications with
22 my attorney. Something along these lines were brought up.

23 Q. Okay. And sir, I want to show you, then -- this is April
24 28. I want to show you Defendant's D46 and see where you go
25 with that subject.

1 MR. RIVERO: Yeah.

2 BY MR. RIVERO:

3 Q. Now, what happens on May 30th, 2014, that's a month after
4 your email to Craig --

5 MR. RIVERO: And you're going to have to make this
6 bigger for anybody to read it, Mr. Shah. It's a little tough,
7 so I'm going to -- I'll read it out loud here. It is the
8 second paragraph.

9 BY MR. RIVERO:

10 Q. This is Joe Karp talking to Craig Wright's lawyer, right?

11 A. Yes, it is.

12 Q. "What I would like to do is arrange for contemporaneous
13 rescission of this stock transfer to Ira or just retain the
14 transfer to Ira with a -- documentation of how the amounts were
15 arrived at and what they are equal to in terms of the date of
16 David's death versus the date of the transfer. I would like it
17 to reflect that it is not income to Ira." Right?

18 A. Yes. That's what it says.

19 Q. What Karp is trying to do is -- as you had indicated in
20 your email, he's trying to figure out how not to pay taxes on
21 this, right?

22 A. I'm not entirely sure.

23 Q. He wrote it on your behalf, right?

24 A. Yes.

25 Q. Okay.

1 MR. RIVERO: And let's see the bottom, Mr. Shah.

2 Bottom.

3 BY MR. RIVERO:

4 Q. Now, sir, the very bottom, do you see that you're copied on
5 the letter, Mr. Kleiman?

6 A. Yes.

7 Q. You knew what your lawyer was doing, right?

8 A. I don't understand these type of matters. That's why I
9 seek out lawyers.

10 Q. Okay. Let's talk about the devices.

11 You get to your brother's house a couple of weeks -- two to
12 three weeks after his death, right?

13 A. Yes.

14 Q. And you have had a professional cleaning crew there?

15 A. Correct.

16 Q. But you don't have -- you don't have any reason to say the
17 professional cleaning crew had discarded either devices or
18 papers, do you?

19 A. No.

20 Q. No. Okay.

21 So what you do is you throw away a bunch of Dave's papers
22 and you formatted drives that you couldn't access, right?

23 A. I formatted two empty drives and irrelevant papers.

24 Q. This demonstrative was used by --

25 MR. RIVERO: Judge, just a housekeeping. I'm not sure

1 that I moved the admission of D46.

2 THE COURT: You did not.

3 MR. RIVERO: I did not.

4 Your Honor, I would move its admission at this time.

5 MR. BRENNER: Which one was that, Judge?

6 THE COURT: D46.

7 MR. BRENNER: Is that the last one that was just on
8 the screen?

9 MR. RIVERO: No. Mr. Brenner, it is -- can you show
10 D46.

11 MR. BRENNER: This is the Karp letter?

12 MR. RIVERO: Yeah.

13 MR. BRENNER: No objection, Your Honor.

14 THE COURT: All right. Admitted into evidence.

15 (Defendant's Exhibit 46 received into evidence.)

16 (Pause in proceedings.)

17 BY MR. RIVERO:

18 Q. You're telling the jury that you reformatted this one and
19 this one.

20 A. That's correct.

21 Q. Yeah. Mr. Kleiman, do you have the devices?

22 A. Yes.

23 Q. Where are they?

24 A. They're at my home.

25 Q. Okay. And did you bring them here today?

1 MR. BRENNER: Your Honor, this has been addressed by
2 the Court pretrial.

3 THE COURT: The objection is sustained.

4 BY MR. RIVERO:

5 Q. Sir, this -- when you say that you -- it was empty, what
6 happened was that you opened it and a message came up about
7 something to do either with the operating system or
8 reformatting, right?

9 A. Yeah. A pop-up shows up and says the drive needs to be
10 formatted. So that's what I did.

11 Q. Did you later learn that your brother had put -- had used
12 this kind of device as a security measure that was designed to
13 protect the security of his drives?

14 A. I've never heard of anything like that. No.

15 Q. Okay. You didn't talk to any of his friends about that
16 subject?

17 A. About any -- no.

18 Q. Okay. So when did you -- when did you -- when you were --
19 changing the format is changing the operating system on the
20 drive, right?

21 A. No. It's just completely -- just starting a fresh drive.
22 The drive -- you can't use it until you format it.

23 Q. Okay. So you formatted that.

24 Was there encrypted data on this particular drive?

25 A. No. The same thing applied to both of those drives. They

1 both suggested that they needed to be formatted before they
2 could be used.

3 Q. But my question is: Was there, in truth and in fact,
4 encrypted data on either of these two drives, do you know?

5 A. No.

6 Q. Okay. You tried to look in them, but you didn't see
7 anything, right?

8 A. Like I said, all I saw was that pop-up message that it
9 needed to be formatted.

10 Q. Now, this one, you wrote on here: "Blank. Needs format."
11 And what's this word -- if you can see it?

12 A. I -- I can't see it.

13 Q. You wrote that, though, I assume?

14 A. Yeah. Whatever's on there is written by me, yes.

15 MR. RIVERO: Judge, can I bring it closer to
16 Mr. Kleiman so he can try to read it?

17 THE COURT: Certainly. Or you can show him the
18 exhibit. Whatever is easier.

19 MR. RIVERO: Oh, do we have it as an exhibit? Oh,
20 yeah. Thank you.

21 Can we show that?

22 Actually, we can show it to the jury, too. It might
23 be easier to -- oh, there it is.

24 BY MR. RIVERO:

25 Q. Okay. What is that? It looks like "S"?

1 A. Looks like.

2 Q. "S-E"?

3 A. "S-E-C" -- yeah, I'm not sure what that is.

4 Q. Is that you, though?

5 A. I believe so.

6 Q. Okay. What were you trying to do? When you were writing
7 on these, what were you trying to do?

8 A. Yeah. I don't remember. I mean, this is many years ago.
9 This could be back in 2013, '14.

10 Q. Okay. And sir, on this one you wrote just: "Empty."
11 Right?

12 A. Yes.

13 Q. And then on this one, you -- what did you write there:
14 "Raw." Right?

15 A. Yes.

16 Q. Okay. Isn't it the case that at least some of these drives
17 had encrypted data or is that incorrect?

18 A. Not to my knowledge.

19 Q. So none of these had encrypted data. Is that what it is?

20 A. Not to my knowledge, no.

21 Q. Okay. But -- all right. But these devices --

22 MR. RIVERO: If you could show that also by screen,
23 Mr. Shah.

24 BY MR. RIVERO:

25 Q. These are something else, right?

1 A. Yeah. Those are thumb drives.

2 Q. Okay. Now, sir, in these -- somewhere in these was
3 encrypted data, correct?

4 A. Again, not to my knowledge.

5 Q. You don't know that there is data encrypted in some of
6 these devices beyond the encryption?

7 A. Oh. Oh, yes. There is one file that I located that I
8 believe is a TrueCrypt file and that's the one I think I spoke
9 about the other day where Craig mentioned that he had a backup
10 to TrueCrypt -- backup files of Dave's. So I assumed that he
11 was referring to the same file that I located.

12 Q. Which one had the TrueCrypt?

13 A. I don't recall because I copied that file onto many of the
14 drives just in case, you know, it was something of importance.

15 Q. Okay. And you don't know exactly -- so you were doing
16 things with these drives.

17 A. Yes.

18 Q. So you say -- do you know if it was one of these?

19 A. It could have been.

20 Q. You don't know?

21 A. No.

22 Q. Okay. Sir, let's talk about those. And I've got -- this
23 is not the actual device which is in your home, but this is an
24 exemplar. It's a similar device purchased off of probably
25 Amazon. Do you see it?

1 A. Yes.

2 Q. And it's called a CORSAIR Survivor. Are you familiar with
3 it?

4 A. From looking at my brother's, yes.

5 Q. All right. Do you understand that this is designed to mil
6 spec, if you know what that means?

7 A. I don't know.

8 Q. Military specifications.

9 A. Okay.

10 Q. Do you know that?

11 A. Okay. Yes.

12 Q. Do you know that?

13 A. I believe I've heard that term, yes.

14 Q. Do you understand the aluminum that is used to make it as
15 protective as possible is aircraft-grade aluminum. Do you
16 understand that?

17 A. Yes.

18 Q. And do you understand that it would withstand being
19 submerged up to 200 meters?

20 A. Okay.

21 Q. Do you know that?

22 A. I didn't know that.

23 Q. All right. And sir, do you understand you couldn't get
24 to -- I couldn't get to 200 meters scuba diving; it would have
25 to be a submarine? You understand that, right?

1 A. Yeah.

2 Q. And it has this special gasket so that it can be opened,
3 but maintaining that security -- about it's not being damaged.

4 A special gasket, right?

5 A. Okay.

6 Q. Sir, whenever it is that you did see your brother, didn't
7 he keep one of these devices on him, key chain or backpack or
8 elsewhere, at all times?

9 A. I've heard other people mention that. But to my personal
10 knowledge, I've never seen him do that.

11 Q. Okay. So you never saw this kind of a device?

12 A. No.

13 Q. All right. And sir, would you agree with me that if your
14 brother, being a computer guy and all -- if he had something
15 very, very important, and he was keeping this on his person, he
16 would keep that very important thing in such a device?

17 A. Perhaps.

18 Q. All right. Now, you made mistakes in throwing away a bunch
19 of Dave's papers and formatting drives that you couldn't
20 access, right?

21 A. I may have said that in a email to Craig when he told me
22 that Bitcoin could possibly be located on Dave's devices. And
23 so, at that point, I thought like discarding anything of Dave's
24 could be like a mistake.

25 Q. Let me show you Defendant's 488.

1 MR. RIVERO: And I'm going to ask Mr. --

2 BY MR. RIVERO:

3 Q. First of all, this is from you to Craig Wright, correct?

4 A. Yes, it is.

5 MR. RIVERO: And I'm going to move the admission of
6 Defendant's 488.

7 MR. BRENNER: One moment, Your Honor.

8 (Pause in proceedings.)

9 MR. BRENNER: That's just the one page, correct?

10 MR. RIVERO: Yes.

11 MR. BRENNER: And the bottom one's blank or just -- no
12 objection, Your Honor.

13 THE COURT: All right. Admitted into evidence.

14 (Defendant's Exhibit 488 received into evidence.)

15 BY MR. RIVERO:

16 Q. And so you say to Mr. Wright -- Dr. Wright -- you say a
17 number of things, but the second paragraph --

18 MR. RIVERO: If you could highlight that, Mr. Shah.

19 BY MR. RIVERO:

20 Q. "As mysterious and exciting as all this news is, I also
21 feel nervous about making mistakes. I very well could have
22 already made some months ago by throwing away a bunch of Dave's
23 papers and formatting drives that I couldn't access." Right?

24 A. Yes.

25 Q. And it's interesting. You say that at the very bottom:

1 "Being" -- the last sentence: "Being that I've only met
2 Patrick a couple times in my life, I was wondering if there are
3 any safety measures you can recommend to me so I don't make
4 another mistake." Right?

5 A. Right.

6 Q. Okay. By the way, did you -- did Craig Wright recommend
7 that you put all these devices in a safe deposit box?

8 A. That's what this letter was getting to. I was asking for
9 his advice for how I should secure them. And I think if you go
10 back and look at the emails, he didn't really give me much
11 advice.

12 Q. Okay. You told people on several occasions that you had
13 placed the devices in safe deposit boxes, did you not?

14 A. Yeah. I think you're referring to an email that I sent to
15 Patrick and I may have said that I placed it in a safety
16 deposit box. But it was actually just a thought of mine. I
17 didn't. I just ended up keeping the drives in Dave's backpack.

18 Q. You told people you had put the drives in safe deposit
19 boxes for safekeeping, did you not?

20 A. Like I just said, I think you're referring to the Patrick
21 Paige email. That's the only one that I recall.

22 Q. Sir, I'm not asking you -- I'm just asking you: Isn't it
23 true that you told people that you had put the devices in safe
24 deposit boxes?

25 A. I told Patrick Paige that I may have put it in a safety

1 deposit box, yes.

2 Q. That you may have?

3 A. Something like that. I have to look at the exact email.

4 Q. Yeah. You didn't, did you?

5 A. No. I just told you, I put it -- left it in Dave's
6 backpack.

7 Q. You just left it in a backpack in a -- is it in your
8 bedroom or in your storage closet?

9 A. It's in one of our rooms. I don't know.

10 Q. Okay.

11 MR. RIVERO: Now, I would like to show it -- to the
12 Court, counsel and the witness, the demonstrative exhibit
13 concerning the electronic devices.

14 Your Honor, this was presented to the Court on
15 October 1st. And Judge, I would like to use this demonstrative
16 with the jury, if I'm permitted.

17 MR. BRENNER: I'm sorry. Is it just the one page?

18 MR. RIVERO: I believe it's -- yes, I think it is
19 because it's just the 14 devices.

20 Mr. Shah, if there's any more, please scroll up. I
21 don't think so.

22 THE COURT: Is there any objection to the use of this
23 demonstrative aid?

24 MR. BRENNER: No, there is not, Your Honor.

25

1 BY MR. RIVERO:

2 Q. All right. Now I'm going to show --

3 MR. RIVERO: Can we show the jury?

4 BY MR. RIVERO:

5 Q. Sir, these are -- these are names for these different
6 devices. They're numbered 1 through 14. There's a model
7 description. And then there are two, for now, empty columns of
8 data overwritten after David -- Dave Kleiman's death and data
9 encrypted. Do you see that?

10 A. Yes, I do.

11 Q. And let me just sum up again to make -- for clarity.

12 The first one says -- Device 1 says "CORSAIR Survivor
13 Stealth TB Black USB Thumb Nail."

14 Do you understand that this is a black CORSAIR USB thumb
15 nail? Right?

16 A. Yes.

17 Q. That's what matches Number 1?

18 A. Yes.

19 Q. Okay. So sir, now, let's say it's the case --

20 MR. RIVERO: If you would, as to Number 1 --

21 BY MR. RIVERO:

22 Q. -- that data was overwritten on this device after Dave's
23 death and it contained encrypted data. Is that not true?

24 A. That, I don't have knowledge of.

25 Q. Sir, on Number 2, if we can see that --

1 MR. RIVERO: Mr. Shah, if you can advance.

2 BY MR. RIVERO:

3 Q. Isn't it the case that both encrypted data was on there and
4 you overwrote that drive?

5 A. Again, I don't have any knowledge of there being encrypted
6 data on any of the drives.

7 Q. How about Number 3? Isn't it true that the third
8 CORSAIR -- by the way, one's gray/blue, which may be this
9 one -- gray/blue, and then one is gray/orange. And I won't
10 venture a guess, but it's one of these. That might be orange.
11 Somebody might describe that as orange.

12 That also had encrypted data and was overwritten by you?

13 A. Again, not to my knowledge.

14 Q. Let me show you as to Number 4. I'm not going to guess
15 which one it is, sir, but -- oh, this one says it "CEIC Thumb
16 Drive."

17 That had -- that had -- you overwrote the data on that,
18 didn't you?

19 A. (No verbal response.)

20 Q. Do you deny it?

21 A. I don't have any knowledge of seeing any encrypted or
22 noticing encrypted data. I mean, I simply used these drives as
23 my personal storage devices. I would add and then delete my
24 files just like regular hard drives, but I don't recall ever
25 like touching any of Dave's files.

1 There was only one encrypted file that said: "Do not
2 delete." And that file, I never touched and I copied it onto
3 many other devices. And that file is safe and sound --

4 Q. Yeah. Mr. Kleiman --

5 MR. BRENNER: Your Honor, he's not finished with his
6 answer.

7 THE COURT: Let the witness finish, please.

8 THE WITNESS: That file is safe and sound. I never
9 deleted it.

10 BY MR. RIVERO:

11 Q. Mr. Kleiman, this -- I'm sorry. Are you still --

12 A. Yeah. No. I'm done.

13 Q. I'm not talking about encrypted as to this particular
14 device. Here, you overwrote the data. Do you understand?

15 A. (No verbal response.)

16 Q. Did you or did you not overwrite the data?

17 A. Possibly my own -- I think if you're referring to my own
18 data --

19 Q. Okay.

20 A. -- then, yes. By adding and deleting my files, I suppose
21 that overwrites my data.

22 Q. Okay. So then on Item 5, you overwrote data, did you not?

23 A. Yes. My own data.

24 Q. This is your testimony.

25 Device 6, under oath, you say -- did you overwrite the data

1 or not on Number 6?

2 A. My data, yes.

3 Q. Number 7, the key USB thumb drive, did you overwrite data
4 or not?

5 A. If it was -- possibly. I mean, you're asking me what I did
6 so many years ago with my own personal storage. It's -- I have
7 no idea. But if you have a forensic report that says exactly
8 what I did, then maybe I did. I don't know.

9 Q. There's a lot of answers there, Mr. Kleiman. I'm trying to
10 get one.

11 Did you overwrite or not or you don't remember?

12 A. Yeah. Okay. I probably should say I don't remember.
13 Because I don't remember.

14 Q. Okay. Then let's go to -- you know that there are -- you
15 know that there are forensics experts in the case, right?

16 A. Yes.

17 Q. Okay. Let's go to Number 8.

18 Didn't you overwrite the data on the Micro Vault Tiny USB
19 drive?

20 A. If a forensic report says so, then maybe I did.

21 Q. Okay. Number 9, did you overwrite data on Number 9?

22 A. I don't remember.

23 Q. On Number 10?

24 A. I don't remember.

25 Q. On Number 11?

1 A. If you're referring to the Windows 7 and Windows 8 drives,
2 then, yes, I formatted those.

3 Q. I'm seeing one -- there's Seagate here and one Seagate
4 there, sir. Do you know?

5 A. Yes. I formatted a Seagate internal drive, yes.

6 Q. Okay. And in doing so, you overwrote data, did you not?

7 A. No, because I didn't believe there was any data on it.

8 Q. You didn't believe there was any data on it?

9 A. That's what the drive prompted me. It said it didn't
10 contain any data; therefore, I formatted it.

11 MR. RIVERO: Number 12, Mr. Shah.

12 BY MR. RIVERO:

13 Q. Encrypted data, sir. Isn't that the case?

14 A. What's that?

15 Q. It had encrypted data, did it not?

16 A. I don't know.

17 Q. Number 13, both encrypted data and overwritten data; isn't
18 that right, Mr. Kleiman?

19 A. Again, I don't know.

20 Q. Number 14, encrypted data and data overwritten; isn't that
21 right?

22 A. I don't know.

23 Q. Okay. All right. Now, these devices, sir, you were
24 concerned about using them, as we saw in the email, right?

25 A. Yes.

1 Q. But you did continue to use them in 2014 after you had
2 described it as a possible mistake. You continued to use these
3 devices; isn't that right?

4 A. Yes. To put my own personal files on. Yes.

5 Q. Sir, your brother wrote an article about overwriting data
6 in a data wipe, right?

7 A. Right.

8 Q. You understand that when you put data on top and on top,
9 either -- whether you believe in your brother's theory of
10 things or in the more conservative theory, you eventually wipe
11 everything out; isn't that right?

12 A. I understand that now. But at the time, like I said, the
13 only file that I noticed that could be -- potentially have any
14 value was the one that said: "Do not delete."

15 Q. I want to be real clear on this because the truth is your
16 brother and Dr. Wright actually did some groundbreaking work on
17 this. And they proved up that you don't have to do multiple
18 overwrites and that a single overwrite can create a data wipe.

19 Do you understand that's something that your brother did
20 important work with Dr. Wright to establish?

21 A. Yeah. I understand that now.

22 Q. Right. And you continued to use these devices in 2014, did
23 you not?

24 A. Yes.

25 Q. You continued to use them in 2015, did you not?

1 A. Yes.

2 Q. You continued to use them in 2016, did you not?

3 A. Yes.

4 Q. You continued to use them in 2017, did you not?

5 A. I believe so.

6 Q. And you continued to use them in 2018, did you not?

7 A. Yes.

8 Q. And you continued to use them after the filing of this
9 lawsuit, did you not?

10 A. I may have taken off some of my personal files. But,
11 again, I -- I've never touched Dave's files.

12 Q. Okay.

13 MR. RIVERO: Here, I'm going to ask Mr. Shah -- on
14 that answer because you were equivocal, sir, I want to show the
15 14 --

16 MR. BRENNER: Objection to the commentary, Your Honor.

17 MR. RIVERO: I want to play for the jury, sir, your
18 testimony at -- let me publish to Defendants -- to Plaintiffs,
19 at Ira Kleiman 1, Page 52, lines 25 through 54.

20 MR. BRENNER: May I have a moment, Your Honor?

21 THE COURT: Certainly.

22 MR. BRENNER: The page and line again, Mr. Rivero?

23 MR. RIVERO: Page 52/25 to Page 54/1.

24 (Pause in proceedings.)

25 MR. BRENNER: Your Honor, the witness gave the precise

1 answers as he gave in the deposition.

2 It's not proper impeachment.

3 MR. RIVERO: All right. Then, Your Honor, what I
4 would propose to do is to play from lines 22 at Page 52 to line
5 1 on Page 54.

6 MR. BRENNER: I need those again. I'm sorry.

7 MR. RIVERO: Sorry. Page 53, line 20 through Page 54,
8 line 1.

9 (Pause in proceedings.)

10 MR. BRENNER: Precise answer the witness gave in
11 trial, same as the deposition. Improper impeachment.

12 MR. RIVERO: No, Your Honor. These are precisely the
13 questions I've just asked.

14 MR. BRENNER: I -- Your Honor, I agree it's precisely
15 the questions he asked, and he gave the same answers in
16 deposition.

17 MR. RIVERO: No. That's not true, Judge.

18 THE COURT: All right. Let me look at the deposition.
19 Give me one moment.

20 (Pause in proceedings.)

21 MR. RIVERO: Your Honor, may we approach or -- I don't
22 know.

23 THE COURT: I have it.

24 MR. RIVERO: Oh, I'm sorry.

25 THE COURT: Page 53?

1 MR. RIVERO: Oh, I apologize, Judge. I didn't know
2 you had access.

3 Yeah. Judge, I was saying Page 53, line 20 -- or
4 perhaps line 22, Judge. But either line 20 or 22 to Page 54,
5 line 1.

6 THE COURT: I'm going to permit it. The objection is
7 overruled.

8 MR. RIVERO: Mr. Shah, do you have that? Do you
9 understand where it is? From line 20 on Page 53, to line 1 on
10 Page 54. Apologize for changing it on the fly, Mr. Shah.

11 All right. Would you please play that for everyone
12 including the jury.

13 (Video played.)

14 BY MR. RIVERO:

15 Q. Sir, do you understand there's a duty in our courts to
16 preserve evidence after you file a lawsuit?

17 MR. BRENNER: Objection. Improper question of a
18 witness.

19 THE COURT: Sustained.

20 MR. RIVERO: Your Honor, I have a motion to make.

21 THE COURT: All right. Let's continue.

22 MR. RIVERO: I'm looking, Judge, for my next area of
23 examination.

24 (Pause in proceedings.)

25

1 BY MR. RIVERO:

2 Q. Okay. With regard to the drives that you gave to Patrick
3 Paige, before you gave them to Patrick Paige, you didn't get
4 any professional analysis of those, did you?

5 A. No. He told me that they were Computer Forensics' hard
6 drives.

7 Q. You did not look in those drives yourself?

8 A. No, I didn't.

9 Q. And you didn't access those drives?

10 A. No.

11 Q. You don't know what was stored on those drives?

12 A. No, I don't.

13 Q. And if there was a Bitcoin wallet on there, you wouldn't
14 know?

15 A. I wouldn't know.

16 Q. And you never asked Patrick Paige for those drives back?

17 A. I don't recall if we did in our -- the litigation with him
18 or not.

19 Q. You never got them back?

20 A. No. I never retrieved them, no.

21 Q. Right. In other words, there's two drives that were in
22 your brother's house on the day that he was -- his body was
23 discovered, and you filed a lawsuit and you finished the
24 lawsuit, right?

25 A. Yes.

1 Q. And what you told -- what you said under oath was you got
2 what you wanted out of the lawsuit, right?

3 A. Yes.

4 Q. But you didn't get back those two drives?

5 A. No. I didn't get the drives.

6 Q. And you never knew what was on the drives?

7 A. That's correct.

8 Q. You don't know what's on the drives today?

9 A. That's correct.

10 Q. On the drive you threw out -- you threw away a drive,
11 right?

12 A. Yes.

13 Q. You couldn't tell us one way or another today whether there
14 were Bitcoin wallets or Bitcoin information on that drive;
15 isn't that true?

16 A. I wouldn't know what was on the drive, no.

17 Q. You were never able to access it?

18 A. Correct.

19 Q. You thought it was broken, correct?

20 A. Yes.

21 Q. But you didn't get any professional help to look at it?

22 A. This drive was discarded long before Craig ever contacted
23 me and mentioned anything about Bitcoin.

24 Q. Your brother was a very highly regarded computer security
25 expert, right?

1 A. Yes.

2 Q. His life's work -- he had devoted himself to computer
3 security issues, right?

4 A. Yes.

5 Q. He had written an important paper with Dr. Craig Wright,
6 which got recognition, right?

7 A. Yes.

8 Q. And you took a drive and you threw it out without getting
9 any help to find out if there was a way to turn it on or to
10 access it; isn't that right?

11 A. Yes. I just thought it was a broken drive. I had many
12 other of his drives.

13 Q. And he had told you he was inventing something bigger than
14 Facebook?

15 A. Yeah. Yes.

16 Q. Now, there was -- besides the two devices that you gave to
17 Carter and Patrick, there was also a telephone.

18 A. Yes.

19 Q. And I don't see a telephone among these devices that you
20 have given us photographs of. There's no phone.

21 A. The cell phone was given to Patrick.

22 Q. Okay. And you didn't do any analysis of the contents of
23 the phone before you gave it over to Patrick?

24 A. I could not access the phone and I was asking for Patrick's
25 assistance to get into it.

1 Q. It was a Samsung Galaxy?

2 A. I believe so.

3 Q. And you didn't get into it?

4 A. What's that?

5 Q. You didn't get into it?

6 A. I never retrieved the phone back. So no.

7 Q. Actually, no. I'm not sure I understand, sir.

8 Did you get into the phone?

9 A. No. I never got into the phone.

10 Q. In other words, when you had it, if I understand what
11 you're saying, you asked for Patrick's help to try to get into
12 the phone?

13 A. Yes.

14 Q. Did you get into the phone?

15 A. No.

16 Q. You don't know what text messages could have been on that
17 phone?

18 A. No, I don't.

19 Q. You don't know if there was email on that phone?

20 A. No.

21 Q. You don't know if there was any data on that phone?

22 A. No.

23 THE COURT: Would this be a good time to adjourn for
24 the evening?

25 MR. RIVERO: Yes, Your Honor.

1 THE COURT: All right.

2 Ladies and Gentlemen, as you can see, it is 5:00. We
3 will adjourn for the evening.

4 Tomorrow will be a shorter schedule; that is, at
5 10:00. So if you'll make your way in at 9:45. Be ready to
6 come into the courtroom at 10:00 and we will proceed until
7 4:30.

8 All right. Have a pleasant evening.

9 The Court's instructions to you previously apply every
10 day. You're not to talk about the case, not to allow anyone to
11 talk to you. Everything learned about the case is learned
12 within this courtroom.

13 Have a pleasant evening.

14 (Jury not present, 5:02 p.m.)

15 THE COURT: All right. Mr. Kleiman, you can go ahead
16 and have a seat, sir. Not a seat -- with your counsel.

17 Go ahead and have a seat.

18 Let me remind you tomorrow we have some criminal
19 matters. So I would ask that you remove the items so that the
20 attorneys and the defendant may have use of the table.

21 Is there anything that we need to address at this
22 time?

23 MR. RIVERO: Judge, as I reflect on it, I believe that
24 what is called for is not a request -- it's not a motion to
25 make now, but I will be bringing up a spoliation instruction at

1 the appropriate time.

2 Judge, just to make clear, I'm not making a motion at
3 this time.

4 THE COURT: All right. Well, with regard to
5 spoliation, let me say that that would have been a motion in
6 limine. And the Court's deadline with regard to a motion in
7 limine has long passed. This is not new information. It
8 certainly is information that was learned and was part of the
9 case for quite some time.

10 So when you state in front of the jury that you have a
11 motion to make, what I don't want to do is I don't want to take
12 the time and require that you come sidebar only to tell me that
13 you're going to be filing a motion at another time.

14 So is there anything for the Court to address based on
15 your statement that you have a motion to make?

16 MR. RIVERO: No, Judge. What I was explaining was
17 that on reflection I realized that I would not be addressing it
18 in that fashion.

19 THE COURT: Okay.

20 MR. RIVERO: My intention was --

21 THE COURT: But on reflection, let me say, Mr. Rivero,
22 that I am not going to address an issue with regard to
23 spoliation, not at this late stage.

24 MR. RIVERO: Judge, another matter is we would move --
25 I think I have a list of documents. I have a lengthy list of

1 documents that I would move the admission of on the basis
2 that -- I'm glad to consult with counsel overnight -- on the
3 basis that they are email exchanges between David Kleiman and
4 Craig Wright with the same indicia of authenticity, including
5 the email address and the signature block.

6 So Judge, what I would propose to do is to consult and
7 bring that matter to the Court's attention first thing in the
8 morning.

9 THE COURT: And these are items that are included on
10 your witness -- or excuse me -- your exhibit list?

11 MR. RIVERO: Yes, Your Honor. Most -- half of them
12 will be the ones among the demonstratives and then another half
13 that are not on the demonstratives.

14 THE COURT: All right. Then let me suggest that the
15 attorneys take the time -- because I do have the Plaintiffs'
16 exhibits to be admitted as part of the video deposition. So if
17 you'll review and confer.

18 And I would say that we could meet early tomorrow.
19 Unfortunately, we have two matters, so we're hoping to be ready
20 right at 10:00.

21 MR. RIVERO: I hope we get agreement on it, Judge.

22 THE COURT: Okay. All right.

23 Anything further?

24 MR. BRENNER: I was just wondering if we could get
25 some sort of estimation -- so we could plan our day tomorrow,

1 some sort of estimation of when Mr. Kleiman's going to be done,
2 so we could get our day planned.

3 THE COURT: How much longer do you have?

4 MR. RIVERO: Yes. Judge, I think actually the
5 devices, which I'm not quite finished with, is the -- in my
6 outline is the last long piece. But I have several smaller
7 areas. If I had to estimate, I don't believe it would be an
8 hour, Judge. I think it might be less than an hour, but I
9 don't want to guarantee. But I think it will be less than an
10 hour.

11 MR. BRENNER: I'm not trying to hold him to it. I'm
12 just trying to line up so we can use the Court's time --

13 THE COURT: All right. Well, following the redirect,
14 who would the Plaintiffs' next witness be?

15 MR. BRENNER: Well, it's probably going to be -- I
16 misspoke earlier when I said one of the videos was 25 minutes.
17 I'm sorry. It is 50 minutes. So we have two videos and a
18 read.

19 But the total time on those is probably an hour 45,
20 plus the read. I'm estimating an hour 26. Three hours. With
21 a 4:30 end time, we may just -- depending when we get through
22 with Mr. Kleiman, we may just do those.

23 So we may or may not get to Dr. Wright at the end of
24 the day. Is that right?

25 MR. FREEDMAN: I think that's correct.

1 MR. BRENNER: So I just -- it really is a matter of
2 when Mr. Kleiman gets off the stand. And that's why I was
3 trying to figure it out.

4 THE COURT: All right, then.

5 MR. RIVERO: Judge, just one other housekeeping
6 matter.

7 Ms. McGovern informs me -- I'm not going to be doing
8 that argument, so I don't know all the details -- but that her
9 view is that we will end up needing some time with the Court to
10 discuss objections to documents within the depo designations.
11 So I would just point that out for what our request would be
12 for planning purposes.

13 THE COURT: Well, let's see if we can confer and
14 agree. To the extent that we can't agree, I recognize that
15 we're going to be breaking early on tomorrow, so I certainly
16 don't want to take your comfort-break time or your lunchtime.
17 So unfortunately, we would have to take it up Monday morning.

18 MR. FREEDMAN: Your Honor, if I may.

19 THE COURT: I mean, unless --

20 MR. FREEDMAN: It could be based on the schedule that
21 there may be like 20 minutes before 4:30. If the Court's
22 amenable, you could let the jury go and we could deal with it
23 then.

24 THE COURT: Certainly. I was certainly being
25 accommodating to your schedule. But if we have that time, then

1 let's take it up at the end of the day.

2 MR. FREEDMAN: I just think that we'll have these
3 three hours of video and Mr. Kleiman for one more hour tomorrow
4 morning. So it may just not make sense to start Dr. Wright's
5 cross with 20 minutes left in the day, and we could use that
6 time to --

7 THE COURT: All right. Then at 4:30 we can address
8 any issues that there may be with regard to these exhibits.

9 MR. FREEDMAN: But at 4:30, I can't -- sorry. My
10 suggestion was -- I wasn't being clear, I guess.

11 My suggestion was that I believe -- it sounds like the
12 time might bring us to complete everyone but Dr. Wright's
13 examination at about 4:00 or 4:10. And if that's the case, the
14 Court could let the jury go at 4:10 and then we could use
15 between 4:10 and 4:30 to address open issues. If the Court
16 wants, we can proceed to start the cross-examination.

17 THE COURT: No. Let's see how far we go. Because if
18 we have a large chunk of time, I'd rather -- the jury's here
19 and I want to make use of their time.

20 Okay. All right. I'll see you tomorrow morning at
21 10:00 a.m.

22 COURTROOM DEPUTY: Judge, I had just -- Judge, hold
23 on. I just have one more thing that the jury -- I'm sorry --
24 that the jury brought up. This may not be a big thing, but the
25 jurors at the end wanted to know if they can move to the seat

1 next of them. And each juror on the other side said that was
2 okay because they wanted to be able to see the monitors better.
3 These on the end.

4 So they wanted -- the jurors that they sit next to
5 said that was fine if they were sitting next to each other.
6 They want to know if that was okay and if everybody was all
7 right with it.

8 THE COURT: If they're comfortable --

9 COURTROOM DEPUTY: They are.

10 THE COURT: -- then certainly they can.

11 COURTROOM DEPUTY: They asked each other.

12 MR. RIVERO: Judge, it's all your call. But I do -- I
13 was going to mention something, is when I sat in the seats to
14 look, it is a little -- I understand why they're saying that
15 because they're a little bit off the camera -- off the screen.

16 THE COURT: As long as they're comfortable sitting a
17 little closer, then -- certainly they're wearing masks --
18 that -- I don't have a problem with it.

19 MR. RIVERO: And Judge, I know everyone appreciates
20 the caution you've taken for all of us on the --

21 THE COURT: Well, let's just keep everybody healthy.

22 All right. See you tomorrow.

23 (Proceedings concluded at 5:09 p.m.)
24
25

1 UNITED STATES OF AMERICA)

2 ss:

3 SOUTHERN DISTRICT OF FLORIDA)

4 C E R T I F I C A T E

5 I, Yvette Hernandez, Certified Shorthand Reporter in
6 and for the United States District Court for the Southern
7 District of Florida, do hereby certify that I was present at
8 and reported in machine shorthand the proceedings had the 4th
9 day of November, 2021, in the above-mentioned court; and that
10 the foregoing transcript is a true, correct, and complete
11 transcript of my stenographic notes.

12 I further certify that this transcript contains pages
13 1 - 293.

14 IN WITNESS WHEREOF, I have hereunto set my hand at
15 Miami, Florida this 12th day of November, 2021.

16
17 /s/Yvette Hernandez
18 Yvette Hernandez, CSR, RPR, CLR, CRR, RMR
19 400 North Miami Avenue, 10-2
20 Miami, Florida 33128
21 (305) 523-5698
22 yvette_hernandez@flsd.uscourts.gov
23
24
25

COURT REPORTER:**[1]** 196/13**COURT SECURITY****OFFICER: [2]**

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